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FEDERAL COMMUNICATIONS COMMISSION REPORTS
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VOLUME 39 (2d Series)

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Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

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F.C.C. 73–133

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEVISION RELAY, INC. (ATR) Revised Rates for Microwave Service; Tariff F.C.C. No. 8, Transmittal No. 50	Docket No. 19609

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. On October 18, 1972, we suspended for three months and designated for hearing herein certain tariff rates filed by American Television Relay, Inc. (ATR), for television program transmission services to CATV customers in Arizona, California, New Mexico and Texas. 37 FCC 2d 751.

2. We framed the issues to govern the proceeding as follows:

(1) Whether the charges, classifications, practices, and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of Section 201(b) of the act;

(2) Whether such charges, classifications, practices, and regulations will, or could be applied to, subject any person or class of persons to unjust or unreasonable discrimination or give any undue or unreasonable preference or prejudice to any person, class of persons, or locality, within the meaning of Section 202(a) of the act;

(3) If any of such charges, classifications, practices, and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices, and regulations for the service governed by the tariffs, and if so, what should be prescribed.

3. We now have before us a "Joint Motion For Enlargement of Issues" filed on or about November 9, 1972 by three of the CATV customers of ATR who would be affected by the increases, namely, Columbia Cable Systems, Inc., Cruces Cable Company, Inc. and Teleprompter Corporation (hereinafter "Petitioners"). Petitioners ask us to add the following "new" issues:

(1) Whether the charges, classifications, practices and regulations published in the aforesaid tariffs are consistent with Price Commission guidelines as expressed in the Commission's proposed Section 61.39.[1]

[1] An Executive Order, issued January 11, 1973, abolished the Price Commission and its regulations transferring, regulatory authority over rate increases by public utilities, effective January 10, 1973, to the Cost of Living Council. The criteria applicable to such rate increases are found at 38 FR 130.81 and are as follows:

(a) The increase is cost-justified and does not reflect future inflationary expectations;

(b) The increase is the minimum required to assure continued adequate and safe service or to provide for necessary expansion to meet future requirements;

(c) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the public utility; and

(d) The increase takes into account expected and obtainable productivity gains.

109–028—73——1

(2) Whether the carrier's increased rates should be contingent on a commitment to an improvement in service.

4. We shall deny this motion for the reasons that (1) no showing has been made by Petitioners that the issues as originally stated do not cover the substantive matters contemplated by the requested issues and (2) the motion was not accompanied by an affidavit as required by Section 1.229(c) of our Rules.

5. With respect to the first requested issue, we framed the original issues in the broad statutory terms used in Sections 201(b) and 202(a) of the Act. Consequently, the parties may adduce on the record competent and material evidence that is relevant to such broadly stated issues. To the extent, therefore, that there are in effect at the time of the hearing or decision herein, any guidelines of the Cost of Living Council that are relevant to the statutory requirements of Section 201(b) or 202(a) such guidelines will be considered by the Commission in determining the lawfulness of the increased rates involved in this case. There is therefore no need to add this issue.

6. With regard to the second requested issue, we have already specified an issue (No. 3) under Section 205 of the Act by which we can make such prescriptive orders as may be warranted by the evidence of record. Thus, if the evidence of record adduced by the parties relating to the quality of service rendered by ATR warrants the imposition of service conditions on any rate increase by the Commission the issues as originally stated are broad enough to permit such action. No need has been shown for the requested issue.

7. Petitioners have not only failed to give appropriate attention to the language of our original issues in submitting this unnecessary motion, but they have failed to comply with Section 1.229(c) of our Rules which requires that an affidavit accompany their motion.[2] We shall therefore deny the motion on its merits and for failure to comply with our rules.

8. Accordingly, Petitioner's "Joint Motion For Enlargement of Issues" IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[2] On or about December 13, 1972 (more than a month after the Motion was filed) Teleprompter filed an affidavit to be associated with a "reply" to ATR's Opposition. Obviously this does not comply with Section 1.229(c).

F.C.C. 73-147

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re CABLE TELESYSTEMS OF NEW JERSEY, CHERRY HILL TOWNSHIP, N.J. For Certificate of Compliance	CAC-985, CSR-205 NJ118

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER H. REX LEE ABSENT.

1. On August 8, 1972, Cable Telesystems of New Jersey filed an "Application for Certification" (CAC-985) in which it proposes to operate a new cable television system at Cherry Hill Township, New Jersey. Cherry Hill Township is located within the Philadelphia market (#4), and Cable proposed to carry the following television broadcast signals: KYW-TV (NBC), WPVI-TV (ABC), WCAU-TV (CBS), WPHL-TV (Ind.), WTAF-TV (Ind.) WUHY-TV (Educ.), WKBS-TV (Ind.), all Philadelphia, Pennsylvania; WHYY-TV (Educ.), Wilmington, Delaware; WNJT (Educ.), Trenton, New Jersey; and WOR-TV (Ind.), WPIX (Ind.), both New York, New York. On October 2, 1972, Taft Broadcasting Company, licensee of Station WTAF-TV, Philadelphia, Pennsylvania, filed a letter opposing the application. On October 13, 1972, Cable amended its application to respond to Taft's objections, and on November 20, 1972, it amended its application to propose carriage of WXTV (Ind., Spanish lang.), New York, New York.

2. Taft argues that Cable's franchise does not comply with the requirements of Section 76.31 of the Commission's Rules because it does not require the franchisee to investigate and resolve complaints or to maintain a local business office as required by Section 76.31(a)(5) of the Rules. In response to Taft's objection, Cable amended its application to state that it will maintain a log of all complaints received and attempt to handle them on a same-day basis, and it will maintain a local business office. In addition, we note that Cable's franchise is also inconsistent in the following respects: the duration of the franchise is 20 years; local authorities do not have power to approve subscriber rates; the franchise fee is inconsistent (the franchise calls for 5% of gross receipts or $3,000, whichever is higher); there is no provision to incorporate this Commission's regulations within one year; and there is no construction schedule. We accept Cable's statement that it

will submit a renegotiated franchise consistent with the rules by March 31, 1977. We note that the franchise was granted on December 13, 1965, and that there is substantial compliance sufficient to permit grant of the application until March 31, 1977, *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10; *LVO Cable of Shreveport-Bossier City*, FCC 72–954, 37 FCC 2d 1037.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the letter objection filed October 2, 1972, by Taft Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, That the "Application For Certification" (CAC–985) filed August 8, 1972, by Cable Telesystems of New Jersey IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–115

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of the Application of
COMMUNICATIONS SATELLITE CORP.
For Such Authority as May Be Necessary in Order To Participate in a Program for the Construction of Four High-Capacity Communications Satellites and for Approval of the Technical Characteristics Thereof — File No. 7–CSS–P–69

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. The Commission is considering a Petition for Commission Determination, filed on September 22, 1971 by the Communications Satellite Corporation (Comsat), requesting that the Commission determine that no filing or grant fee is applicable to the launch of the INTELSAT IV (F–3) satellite, because the grant of construction authority for that satellite was made prior to the adoption of the fee schedule.

2. On September 25, 1968, the Commission adopted an Order (14 F.C.C. 2d 790) granting Comsat authority to participate in a program for the construction of four high-capacity communications satellites. This Order further stated that Comsat was not to furnish any services via such satellites without future specific authority to launch and operate those satellites. On July 1, 1970, the Commission adopted a Report and Order (23 F.C.C. 2d 880) setting forth a satellite schedule of fees; the new schedule was to be effective August 1, 1970, and to apply only to applications filed subsequent to July 1, 1970. In response to a number of petitions for reconsideration, the Commission's Memorandum Opinion and Order (28 F.C.C. 2d 139) was adopted on March 24, 1971, incorporating significant revisions, and was made retroactive to August 1, 1970. It was not until August 18, 1971, that Comsat applied to the Commission for authority to launch and operate the IV (F–3) satellite, as it was specifically required to do by the Commission's September 25, 1968 Order.[1] [2]

3. The original schedule of fees adopted on July 1, 1970, set forth a flat grant fee of $100,000 for "authority to construct and launch a

[1] Due to technical difficulties, the INTELSAT IV (F–1) has not been launched. Should it be launched in the future, it will be subject to the appropriate grant fee for launch and operation.

[2] The INTELSAT IV (F–2) was launched in January 1971. At that time, it was determined that a grant fee based on the then unitary category of construction and launch was assessable.

satellite." Comsat contended that the fee was intended to apply to the entire program of satellites, and that a fee of $10,000 per satellite would be more realistic. This contention was rejected by the Commission. However, Comsat further suggested that fees associated with satellite construction should be assessed only upon satellites which are successfully placed in orbit and are capable of providing commercial service, due to the high risk involved in launching a satellite and placing it in a usable orbit. This suggestion was incorporated into the revised fee schedule adopted on March 24, 1971, by specific separation of the fees for construction of the satellites and those for launch and operation. The former grant fee was made nominal, and the latter set at a percentage of the construction costs of each satellite, a substantially higher figure, which would be assessed only if and when the satellite was capable of commercial operation (due 45 days after successful launch and operation).

4. As stated above, at no time prior to the adoption of the schedule of fees did Comsat have authority to launch and operate the INTELSAT IV (F–3) satellite; it had authority only to construct said satellite. Application for launch authority was not filed until August 18, 1971, clearly subjecting such application to the new schedule of fees. In Paragraph 4 of Comsat's Petition, it is admitted that the statutory language is clear on its face. However, Comsat contends that the Commission did not intend that the new fee schedule be applied to the INTELSAT IV (F–3) satellite. This contention is directly contradictory to the well recognized principle of statutory construction which states that when the language of a statute is clear on its face and not ambiguous, an argument based on legislative intent cannot be used to contradict or refute the language of the statute.

5. The most important argument in Comsat's instant Petition centers around the contention that the Commission intended to establish a launch fee "related to construction authority rather than to launch and operating authority per se." Comsat contends that the launch and operation of a satellite are merely events which trigger the assessment of what amounts to a delayed construction authority grant fee. Further, Comsat contends that the two are "mutually dependent" and thus since authority to construct four satellites in the INTELSAT IV series was granted in 1968, it should not be required to pay a "retroactive" fee in 1971 or 1972 for the launch and operation of said satellites.

6. The above argument, initially attractive, is not well founded. The launch and operation authority grant fee is related to the cost of construction, but only in its mode of calculation; that is, the launch and operation grant fee is based on a percentage of the cost of construction. The two categories are not "mutually dependent" as Comsat alleges, but are two separate phases. Launch and operation authority is not granted by implication along with the grant of construction authority; rather, Comsat was specifically instructed to apply for launch and operation authority when each satellite was ready for launch. Consequently, assessment of a grant fee for such launch and operation cannot be retroactive, since no prior authority existed. A reasonable fee, properly assessable upon an application to launch and operate,

does not become arbitrarily retroactive because Comsat could not foresee its adoption.

7. Comsat states that it suggested a two-step fee program for new satellites as the most equitable arrangement in view of the risks involved in launches, but says it did not intend to agree to what it views as unfair retroactive applications of fees. However, the fee schedule is not being applied retroactively in this instance. There is no doubt that the fee schedule was in effect when Comsat sought launch authority; if, as we believe, it is reasonable to assess separate fees for construction and launch applications, there is no retroactive assessment of a fee for an application filed prior to the adoption of the fee schedule. It is true that Comsat had already embarked upon its program, with Commission approval, but we do not see why a reasonable fee, properly assessable upon an application to launch and operate, becomes arbitrarily retroactive because Comsat could not foresee its adoption.

8. Comsat also argues that application of the fee to it would be inconsistent with the applicability of the fee schedule for other common carrier services. Comsat cites footnote 4 to Section 1.1113 of the rules, which states in relevant part, "No additional fee will be charged for application for licenses to cover a construction permit unless there is a modification or variation of outstanding authority involved." But footnote 4 to Section 1.1113 does not apply to the instant situation. Footnote 4 applies only to commercial transmit/receive earth stations, receive only or portable earth stations and other such stations. Footnote 4 does not apply to applications for authority to launch and operate satellites. Thus, this footnote merely serves to point up the fact that the Commission treated different classes of authorization differently.

9. In view of the foregoing, we conclude that the assessment of a grant fee is required in accordance with the new schedule of fees adopted by the Commission on April 24, 1971 for launch and operation of the INTELSAT IV (F–3) satellite, all subsequent satellites in the INTELSAT IV program, and any other commercial satellite for which the launch and operation are authorized by this Commission.

Accordingly, IT IS ORDERED, That the Petition for Commission Determination filed by the Communications Satellite Corporation IS DENIED, and Comsat shall submit within 30 days of the release of this Order a fee of $18,910 to cover the grant fee associated with authorization for Comsat to participate in the launch and testing of the INTELSAT IV (F–3) satellite adopted December 1, 1971 (FCC 71–1209). Appropriate grant fees associated with outstanding authorizations concerning the launch and operation of other INTELSAT IV satellites and all subsequent grant fees for INTELSAT satellites will be assessed by proper notice to Comsat that such fees are due and payable.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-116

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CRUCES CABLE CO., INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT
EL PASO CABLEVISION, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. We have before us a "Petition For Partial Reconsideration" filed by American Television Relay, Inc. (ATR) challenging our action of July 5, 1972 wherein we imposed a forfeiture of $500 on ATR for violating Section 203(c) of the Communications Act. (35 FCC 2d 707, 711–712; adopted June 28, 1972; released July 5, 1972).

2. ATR, a communications carrier subject to the requirements of Section 203(c) of the Act, accepted in September, 1971 a payment of $6,076 for two months service to Las Cruces, New Mexico even though there was no ATR tariff offering in effect in September, 1971 for service to Las Cruces at the monthly rate of $3,038 or any other rate. We held that this violated Section 203(c) of the Act which provides that: "no carrier . . . shall (1) charge, demand, collect, or receive a greater or less or different compensation . . . than *the charges specified in the schedule then in effect.*" (Our emphasis).

3. ATR argues in support of its Petition For Partial Reconsideration that: (1) its Tariff F.C.C. No. 8 contains a regulation which provides for receipt of two months' charges in advance; (2) although Section 203(c) of the Communications Act provides that service may not be rendered before tariffs are effective it does not prohibit the receipt of advance payments for such service; (3) and that in any event, it is unequitable to impose a forfeiture since ATR acted in good faith in relying upon the advance payment regulation in its tariff.

4. ATR's argument with respect to the tariff regulation providing for receipt of advance payments is without merit. ATR's Tariff F.C.C. No. 8, *including all charges, classifications and regulations set out therein* (our emphasis), did not become effective with respect to the

offer of service to Las Cruces until the effective date of ATR's Las Cruces filing, which was October 2, 1971. Therefore, the advance payment regulation in ATR's Tariff F.C.C. No. 8 was itself not effective until October 2, 1971 and ATR can not rely upon that regulation as justification for its action in September, 1971. We also find that ATR's interpretation of Section 203(c) of the Act is without merit. To say that, although a carrier may not provide service before there is an effective tariff but that it may nevertheless charge for such service before there is an effective tariff, is a distortion of the plain language of the statute which clearly states that *no carrier shall receive or collect any payment except at charges specified in the schedule then in effect* (our emphasis). 47 USC 203(c). Thus, under the statute, a carrier may not collect any amount that is not "specified" in the tariff and the tariff must be "in effect" at the time of collection. Moreover such an interpretation could have unreasonable results. For example, if a tariff is filed after receipt of payments and the tariff is suspended or rejected the customer would be paying for service not received. Furthermore, the customer is entitled before payment to know the "specified" amount he is obligated to pay under the tariffs and what classifications and regulations are applicable to the service he receives from the carrier. We do not believe that ATR is equitably entitled to a lifting of the forfeiture since the violation of Section 203(c) resulted from an unreasonable misinterpretation by ATR of its own tariff and a clear disregard of its duties under the plain language of Section 203(c).

5. Accordingly, ATR's Petition for Partial Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-117

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
CRUCES CABLE COMPANY, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT
EL PASO CABLEVISION, INC., COMPLAINANT
v.
AMERICAN TELEVISION RELAY, INC., DEFENDANT

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT.

1. On July 5, 1972, we released our Memorandum Opinion and Order under this caption in which we, *inter alia*, considered and ruled on a large number of formal and informal pleadings that had been submitted by Cruces Cable Company, Inc. (Cruces) and El Paso Cablevision, Inc. (El Paso) against American Television Relay, Inc. (ATR) and by ATR in reply thereto. 35 FCC 2d 707.

2. El Paso and Cruces are CATV customers of ATR, a microwave carrier for transmission of video signals to El Paso, Texas and Las Cruces, New Mexico, respectively. The essence of the numerous pleadings by these customers was that ATR was either charging or proposing to charge El Paso and Cruces rates that were contrary to what ATR allegedly agreed to charge in written contracts with El Paso and Cruces and that such rates were otherwise unduly discriminatory or unjust and unreasonable. In the case of Cruces, all of its pleadings were directed to the monthly rate of $3,038 which ATR had put into effect to Las Cruces in its interstate tariffs on October 2, 1971. In the case of El Paso, all of its pleadings were directed to ATR's monthly rate of $9,380 for service to El Paso, Texas which was put into effect in ATR's tariff on January 19, 1972. Both Cruces and El Paso requested various forms of special, emergency and extraordinary relief, all of which were dismissed or denied by us without prejudice to their seeking appropriate relief through further action and procedures available to them. We set forth the reasons for our decisions at 35 FCC 2d 707 *et seq.*

3. We now have before us a "Joint Petition for Reconsideration" of our July 5, 1972 action filed by Cruces and El Paso (hereinafter "Petitioners") on or about August 4, 1972. Petitioners request that we order a hearing to determine whether the $3,038 rate for Cruces and the $9,380 rate for El Paso are unduly discriminatory and, if so, what relief should be granted to Cruces and El Paso.

4. We shall deny this joint petition for reconsideration for the reasons that (a) petitioners set forth no new facts or arguments in their petition that were not fully considered by the Commission in its action of July 5, 1972, and (b) by separate action on October 12, 1972 in Docket No. 19609 we instituted an investigation into the lawfulness of the rates currently being charged for service by ATR to petitioners (37 FCC 2d 751, adopted October 12, 1972; released October 18, 1972). In our October 12, 1972 action we suspended for three months the increased rates of ATR for service to petitioners and other customers and entered an accounting order providing for possible refunds. The suspended rates became effective January 11, 1973. Hearings thereon are scheduled to commence in Docket No. 19609 in the near future. Thus, insofar as petitioners have been seeking a hearing on the lawfulness of the rates they are required to pay under presently effective tariffs, such a hearing is being afforded to them in Docket No. 19609.

5. However, petitioners continue to challenge the validity of the rates that were in effect prior to January 11, 1973, i.e. the $3,038 rate to Cruces effective from October 2, 1971 to January 11, 1973 and the $9,380 rate to El Paso effective from January 19, 1972 to January 11, 1973 and each has on file with us a formal complaint wherein each attacks the validity of such prior rates and requests monetary damages for such past alleged unlawful rates. No action has been taken by us on these formal complaints which were filed November 5, 1971, in the case of Cruces, and August 4, 1972, in the case of El Paso. The question is therefore raised as to whether we should act now to designate these complaints for hearing to determine the lawfulness of these past rates while we are at the same time engaged in a hearing in Docket No. 19609 to determine the lawfulness, for the present and the future, of the current rates charged by ATR as to all its customers and as to all its service points.

6. We believe that the public interest and the ends of justice will best be served by directing our limited resources at this time to resolving the question of lawfulness of the currently effective rates of ATR, in Docket No. 19609, before considering the questions of whether or not petitioners are entitled to monetary damages for alleged unlawfulness of the past rates of ATR for service to Las Cruces, New Mexico and El Paso, Texas. The January 11, 1973 rates of ATR imposed substantial increases in rates to a total of 16 points served by ATR and to CATV customers other than petitioners, who do not challenge the past rates and who are concerned about obtaining a ruling on the lawfulness of the currently effective rates and in determining what rates they should pay for the present and future. Accordingly, we shall

defer action on the petitioners' pending formal complaints for monetary damages for allegedly unlawful rates in effect prior to January 11, 1973. Petitioners' rights will be protected in that, in order to avoid a multiplicity of suits, we will consider the pending formal complaints of petitioners as having continuing effect and thus covering the entire period prior to January 11, 1973 during which the challenged rates were being charged to petitioners.

7. In view of the foregoing, the "Joint Petition For Reconsideration" IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–182

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. WILLIAM E. ERICKSON
against
WSMS–TV, WORCESTER, MASS.

ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. The Commission has before it an Application for Review filed on May 8, 1972 by Mr. William E. Erickson of the ruling of the Broadcast Bureau of April 13, 1972, 34 F.C.C. 2d 604 (1972).

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20530

In Re Complaint by
ACCURACY IN MEDIA, INC.
Concerning Fairness Doctrine Re National Public Affairs Center for Television, Public Broadcasting Service, and Station WNET, New York, N.Y.

JANUARY 7, 1973.

ACCURACY IN MEDIA, INC.,
501 13th Street NW.,
Suite 1012,
Washington, D.C.

GENTLEMEN: This will refer to your complaint of June 19, 1972, against the National Public Affairs Center for Television (NPACT) and the Public Broadcasting Service (PBS) and your complaint of August 16, 1972, against Television Station WNET, New York, New York.

In your complaint against NPACT and PBS, you state that on April 26, 1972, WETA–TV and other stations throughout the country broadcast a one-hour program produced by NPACT and distributed by PBS entitled "Special Report: The President on Vietnam," and allege that this program violated the fairness doctrine. In particular, you state that the program began with a sixteen-minute statement by President Nixon and that the balance of the hour consisted of commentary by four persons and the moderator, Mr. Sander Vanocur, which was generally critical of the President's policy and views. You state that in introducing the panel of commentators, Mr. Vanocur remarked:

> Since the White House announcement of the President's address, we of NPACT went to work trying to arrange a politically balanced panel of individuals to discuss the issues raised by the President. Well, our panel tonight is not balanced. There's no spokesman for the Administration. And, this is not our doing.

You state that Mr. Vanocur went on to explain that NPACT had sought spokesmen from Congress or the White House to speak for the Administration, but that such attempts had not been successful; and that Mr. Vanocur had succeeded in lining up two journalists and Mr. Richard Barnet of the Institute for Policy Studies, all of whom were known to be critics of the Administration. You contend that such panel and its commentary evidence violation of the fairness doctrine.

You further allege that the program in question violated Section 396 (g) (1) (A) of the Public Broadcasting Act which requires that all

programs or series of programs be produced with strict adherence to objectivity and balance.

You had written to NPACT on May 2, 1972, regarding the program and in a letter to you dated May 30, 1972, in response to your complaint, NPACT, stated that the program was balanced since it included 16 minutes of the President's views without interruption or questioning, and that the fairness doctrine does not require that a balance of views be presented within a single program; it also cited other of its programs which, overall, were said to have provided a balanced discussion on the Vietnam issue; finally, it stated that the panelists were selected not for their critical viewpoints, but for their knowledge and expertise.

In a reply to NPACT dated June 7, 1972, you stated that NPACT's response was unsatisfactory and fails to address itself to your allegation that the program in question violated Section 396 of the Public Broadcasting Act, such allegation being the primary basis for your complaint to the Commission. In this regard, you contended that the fact that a member of Congress or an official of the Administration was not available did not excuse NPACT from its obligation to provide a balanced panel, and that there was no evidence that NPACT made any effort to find a journalist or scholar who would have had a viewpoint more supportive of the President.

You request that the Commission find NPACT and PBS in violation of Section 396(g)(1)(A) of the Public Broadcasting Act and the fairness doctrine and issue an order instructing those parties to produce a program on the Administration's Vietnam policy which will rectify the imbalance of the April 26 program. You also seek an order advising against any future production of similarly unbalanced programs.

In your complaint against WNET, you state that on May 9, 1972, the station broadcast a program entitled "Free Time" which featured David Halberstam, Daniel Ellsberg, David Dellinger, and Richard Barnet and discussed the Administration's Vietnam policies, as well as the personal character and motivation of the President in formulating and pursuing such policies. You allege that the program "subjected" these topics "to a completely unbalanced and violent assault" and was violative of the fairness doctrine in that no opposing or contrasting views were presented. You also allege that this program represents a consistent pattern of one-sided and unbalanced presentations by WNET over a substantial period of time. You further state that on May 16, 1972, WNET broadcast a discussion of the Administration's decision to assist South Vietnam in resisting invasion from the North and presented the anti-Administration views of Jane Fonda and Tom Hayden. You allege that this program was also one-sided in the views which were presented and hence violative of the fairness doctrine.

You had written to WNET on June 6, 1972, and in a letter to you dated June 13, 1972 in response to your complaint, WNET stated that its entire programming, since the beginning of 1972, had presented a balance of contrasting views on issues associated with United States'

involvement in Vietnam and was in full compliance with the fairness doctrine.

In your August 16 letter to the Commission you stated that although WNET cited interviews with members of Congress and other supporters of the Administration's Southeast Asian policies as evidence of its compliance with fairness, a number of these programs were broadcast prior to the events which were the subject of the May 9 and 16 presentations and it remains to be demonstrated that any of these programs were specifically addressed to the remarks which were broadcast in the later "Free Time" and Fonda-Hayden discussions. In this regard, you contend that the fairness doctrine requires that pro-Administration spokesmen have an opportunity to address themselves to the specific remarks and issues raised by Jane Fonda and David Halberstam. You also allege that WNET has consistently assaulted the Government's Vietnam policy and has failed to afford substantial opportunity for proponents or supporters of that policy to present their views on the issues involved. You request the Commission to find WNET in violation of the fairness doctrine and to issue an order directing the station to produce a program which will present views supportive of the Administration's Vietnam policy and opposing those presented in the programs of May 9 and 16.

To the extent that your complaint against NPACT and PBS is based on Section 396(g) (1) (A) of the Public Broadcasting Act, which is applicable to the Corporation for Public Broadcasting, your attention is invited to the Commission's letter to you, dated January 23, 1973, footnote 1.

Since your instant complaints appear to raise similar fairness doctrine issues and involves the same fairness principles, they are reviewed here together.[1] Under the fairness doctrine, if a broadcaster presents one side of a controversial issue of public importance, he is required to afford reasonable opportunity for the presentation of contrasting views. In laying down guidelines for the implementation of this general principle of fairness, the Commission has stated:

> . . . it should be remembered that there is no mechanical requirement or formula for achieving fairness. The broadcaster need not balance editorial for editorial or viewpoint for viewpoint. Moreover, there is no requirement that a licensee achieve a balance of opposing views within a single broadcast or even that he present opposing views on the same series of programs. . . . What is required is that the broadcaster take affirmative steps to afford a reasonable opportunity for presenting contrasting viewpoints on controversial issues of public importance in the station's *overall* programming. *Wilber E. Schonek*, 19 FCC 2d 840, 841 (1969). (Emphasis added).

In conformity with this "overall programming" standard of licensee performance under the fairness doctrine, the Commission requires that a complainant establish, *inter alia*, reasonable grounds for the claim that a station or network has presented only one side of a controversial issue of public importance and has not afforded reasonable opportunity in its overall programming for the presentation of contrasting views on that particular issue. See *Allen C. Phelps*, 21

[1] We note that NPACT is neither a network or licensee, but only a program producer for PBS.

F.C.C. 2d 12 (1969). As the U.S. Court of Appeals for the District of Columbia recently held:

> On a complaint under the fairness doctrine, the burden is on the complainant not only to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this particular issue. It is not enough for the complainant to allege there is a controversial issue on which the complainant wants to be heard on the licensee's station. The essential element in invoking the fairness doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. *Healey* v. *F.C.C.*, 460 F. 2d 917, 921 (D.C. Cir. 1972).

Review of your complaint of June 19 against PBS according to these principles fails to provide reasonable grounds for a finding that PBS has not afforded reasonable opportunity in its overall programming for a balanced discussion of contrasting views on the subject of Vietnam. Assuming that there may have been an imbalance of views presented in the program "Special Report: The President on Vietnam", this does not, by itself, indicate that PBS has failed to comply with fairness. In this connection, it is noted that in its response to you of May 30, NPACT included a summary list of PBS programming on the subject of the Vietnam War presented during the previous five months and stated:

> This list shows that, in addition to the airing of three prime-time programs featuring Presidential addresses on this subject, PBS has offered programs devoted exclusively to Vietnam on "Firing Line," "This Week," and "The Advocates," featuring the viewpoints of members of the Administration, Congressmen from both political parties, newsmen, and Viet Cong and South Vietnamese Government officials, including two half-hour interviews with President Thieu; that PBS also recently offered four and a half hours of the testimony of two chief Administration spokesmen, Secretary of State William Rogers and Secretary of Defense Melvin Laird, on Vietnam before the Senate Foreign Relations Committee; that in addition to these special programs on the Vietnam issue, many recent interviewees on "Thirty Minutes With" have addressed this subject from varying viewpoints, including such Administration officials or supporters as Defense Secretary Melvin Laird, Admiral Thomas Moorer, Chairman of the Joint Chiefs of Staff, Special Presidential Assistant Patrick Buchanan, and Senator John Tower. Ongoing Vietnam developments have been discussed on a weekly basis on "World Press" and "Washington Week in Review."

The summary of PBS public affairs programming from January 1 to May 18, 1972, indicates that PBS presented twelve programs devoted in their entirety to topics related to Vietnam, seven individuals who appeared on the program "Thirty Minutes With . . ." and discussed the war, two program series providing updated coverage of developments in Vietnam by television journalists, and four other special programs during which Vietnam was discussed. Upon these uncontradicted statements of fact, it would appear that PBS' overall programming on the subject of Vietnam presented a balance of contrasting viewpoints and that no violation of the fairness doctrine is evident.

Review of your complaint of August 16 against WNET also fails to disclose reasonable grounds for your claim that the station has not afforded reasonable opportunity, in its overall programming, for

109-028—73——2

the presentation of views supportive of the Administration's Vietnam policies and contrasting with those expressed by the anti-war spokesmen who appeared in the two particular programs which you cited. In this regard, it is noted that in its response to you dated June 13, WNET directed your attention to numerous programs broadcast from January to May of 1972 which presented the views of various Administration spokesmen and supporters on the Vietnam issue, including those of Melvin Laird ("Thirty Minutes With . . .," January), the President (State of the Union address, January and "This Week", 5/10/72), Ambassador Ellsworth Bunker ("Firing Line", 2/6/72), South Vietnam's President Thieu ("This Week", 3/29/72 and 4/5/72), Senator Robert Dole ("Thirty Minutes With . . .", 4/3/72), Congressman Robert Price ("Thirty Minutes With . . .", 5/4/72), Senator John Tower ("Thirty Minutes With . . .", 5/18/72), and Secretary of State William Rogers (Testimony before Senate Foreign Relations Committee, 3 hrs., April). Upon these facts, it does not appear that WNET has failed to present pro-Administration viewpoints in its overall programming on Vietnam, nor have you provided evidence that the station has engaged in a "consistent pattern of assault" on the President's Vietnam policies. Again, it should be emphasized that the proper standard of licensee performance under the fairness doctrine is its overall programming on a given controversial issue of public importance, and the fact that a particular program or even a series of programs presents only one side of such issue does not mean that the fairness doctrine has been violated. Absent reasonable grounds for concluding that a station has not afforded reasonable opportunity for the presentation of contrasting views in its overall programming, no Commission inquiry or action is warranted. No such grounds are evident here.

You also contend that WNET is obligated to afford time to Administration spokesmen to specifically counter the views expressed by Jane Fonda and Tom Hayden in their May 16 appearances. However, you have submitted no information or material allegation to support a claim that such views and remarks of Fonda and Hayden presented one side of any controversial issue of public importance that is separate and distinct from the overall issue of American policy in Vietnam as recognized and discussed in the station's overall programming. In essence, your contention argues for the application of the fairness doctrine on a statement-for-statement, or viewpoint-for-viewpoint basis, an approach to fairness which has been rejected by the Commission. As the Commission stated in *National Broadcasting Co.* (AOPA complaint), 25 FCC 2d 735 (1970):

> Clearly, the licensee must be given considerable leeway for exercising reasonable judgment as to what statements or shades of opinion do require offsetting presentation. If every statement, or inference from statements or presentations, could be made the subject of a separate and distinct fairness requirement, the doctrine would be unworkable. More important, . . . such a policy of requiring fairness on each statement or inference from statements would involve this agency much too deeply in broadcast journalism. We would become an integral part of broadcast journalism, passing on thousands of complaints that some statement, or inference to be drawn from a statement, on a newscast or other news show had not been offset by a countering presentation. A policy

of requiring fairness statement by statement or inference by inference, with constant Governmental intervention to try to implement the policy, would simply be inconsistent with the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open." 25 FCC 2d at 736–37.

For the above reasons, it does not appear that further Commission action is warranted on either of your complaints.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73–141

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
COMPLAINT BY FRIENDS OF THE EARTH CONCERNING FAIRNESS DOCTRINE RE STATION WNBC–TV, NEW YORK, N.Y.

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. In a letter dated August 5, 1970 to Friends of the Earth (FOE), the petitioner herein, the Commission reviewed petitioner's contentions that WNBC–TV was carrying commercials for high powered cars and leaded gasolines, that these commercials constituted discussion of one side of a controversial issue of public importance, and that the station was not adequately presenting the other side. The Commission concluded that the general product advertisements before it did not constitute discussion of one side of a controversial issue. *In Re Complaint by Friends of the Earth Concerning Fairness Doctrine Re Station WNBC–TV, New York, N.Y.*, 24 FCC 2d 743. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit. The Court found that this case was indistinguishable from our cigarette advertising opinion,[1] which held that cigarette advertisements presented one side of a controversial issue, and remanded the case to the Commission for a determination of whether the licensee was satisfying its fairness doctrine obligations by carrying a reasonable amount of information on the other side of the issue. *Friends of the Earth* v. *F.C.C.*, ——— U.S. App. D.C. ———, 449 F. 2d 1164 (D.C. Cir. 1971).

2. On November 18, 1971, the Commission asked the parties for a statement of their views on what would constitute an appropriate past period for which data should be obtained. Comments were requested on whether advertisements for small cars and non-leaded gasoline were part of the discussion of the issue, and comments were also requested on related problems of reviewing past broadcasts of such advertisements.

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[1] *Applicability of the Fairness Doctrine to Cigarette Advertising*, 8 FCC 2d 381, petitions for reconsideration denied, 9 FCC 2d 921 (1967), affirmed *sub nom. Banzhaf* v. *F.C.C.*, 132 U.S. App. D.C. 14, 405 F. 2d 1082 (1968), *cert. den. sub nom. Tobacco Institute* v. *F.C.C.*, 396 U.S. 842 (1969).

3. After receiving filings and responses from the parties the Commission, on February 22, 1972, in an *Interim Memorandum Opinion and Order on Remand* found that a review of past programming for one year was appropriate and that four months was a reasonable period of time within which to allow the licensee to complete the review. See *Interim Memorandum Opinion and Order on Remand*, 33 FCC 2d 648. In addition, due to the continuing nature of the issue, the Commission ordered the National Broadcasting Company (NBC), to the extent that it was currently carrying advertisements for large engine automobiles and leaded gasolines of the type relied upon by FOE, to advise the Commission within twenty days of its current plans for making available a reasonable opportunity for the presentation of the opposing viewpoint.

4. In an Order adopted March 22, 1972, the Commission granted NBC's request for additional time to study its response to the Commission's February 22 *Interim Memorandum Opinion and Order on Remand*. In the meantime, however, NBC and FOE agreed that amicable termination of the proceedings in this case would best serve the public interest. The parties agreed that a review of WNBC's past programming presented special problems in that some dispute existed over the proper past period to be covered and also as to whether advertising for small automobiles may have been an appropriate fairness response to advertising of large automobiles. Additionally, any review of WNBC–TV's past programming would have necessitated a great deal of time and expense. The parties have also agreed that in view of the forthcoming promulgation by the Commission of new guidelines with respect to the fairness doctrine in Docket No. 19260 some of the issues involved in this proceeding would be superseded.

5. In the light of these considerations and FOE's belief that a settlement would facilitate the concentration of energies on present and future programming dealing with automobile pollution, the parties propose that the proceeding be discontinued. We note that in making this proposal FOE took account of the cooperative response of Station WNBC–TV to the request of the City of New York for the assistance of broadcasters in a campaign to focus public attention on automobile-produced air pollution problems in the New York City area, including plans for substantial treatment of these issues.

6. In light of the motion before us and the grounds for it set forth above, IT IS ORDERED, That the proceeding on the complaint of Friends of the Earth against WNBC–TV IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
HERSCHEL KASTEN, KASKASKIA JUNIOR COLLEGE, HOFFMAN, ILL.
Concerning Fairness Doctrine Re Station
WILY, Centralia, Ill.

FEBRUARY 14, 1973.

MR. HERSCHEL KASTEN,

Member of the Board of Trustees, Kaskaskia Junior College, Box 102, Hoffman, Ill.

DEAR MR. KASTEN: This is in response to your letter of complaint, dated July 10, 1972, against Standard Broadcast Station WILY, Centralia, Illinois.

We regret that we are just now able to respond to your letter, but the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once. Therefore, it was necessary to postpone consideration of your complaint which normally we would have dealt with much earlier.

You allege that the general manager of Station WILY broadcast false and misleading editorials which contained personal attacks against you. You state that the station offered you time to reply to the editorials, but that you were "advised against replying and so did not."

You enclosed a tape of two of the editorials, and review of these broadcasts indicates that the editorials concerned the proposal to replace President Eugene McClintock of Kaskaskia Junior College. The editorials, which supported the president, stated that "a local man is being persecuted, accused without facts, belittled and harassed"; that the president is being "pilloried"; that animosity toward his administration is automatic with respect to almost everything which it proposes; that the opposition has launched a "vindictive, malicious, and irresponsible" campaign against Mr. McClintock; that you are not qualified to be President of the College since you do not have the requisite background or college credits; that the station manager would choose Mr. McClintock over you for the office; that you should resign from the Board of Trustees of the College; and that the dissension at the College was "fostered and encouraged by small, yes, let's say even a very small faculty member" with your support. The editorials also stated that the station had invited the Board members to air their views; that some have accepted; and that others, including yourself, had refused. The later editorial repeated the station's offer of free time to the Board members and also offered "equal time" to those with contrasting views.

You request the Commission to review this matter pursuant to applicable rules and policy, and, in particular, direct attention to the broadcast of "mistaken 'facts' " in the editorials as evidence that the station has ignored your community's "right to hear unbiased reporting, editorializing, and interviewing."

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material, including station editorials.

However, when, during the presentation of views on a controversial issue of public importance, an attack is made upon an identified person or group, it is the duty of the licensee to notify the person or group attacked, to send a recording, transcript or as accurate a summary as possible, and to afford an opportunity for a response. A personal attack, within the meaning of the Commission's Rules, is an attack "upon the honesty, character, integrity or like personal qualities of an identified person or group." In this regard, mere mention of a person or group, or even certain types of unfavorable references thereto, does not constitute a personal attack as so defined. Thus, rulings of the Commission have distinguished between remarks which question or dispute the judgment or wisdom of a particular individual or group and those which cast aspersions on a person or group's honesty, character or integrity. Only the latter constitute personal attacks within the meaning of the Rules. As the Commission stated in *The Port of New York Authority*, 25 F.C.C. 2d 417, 418 (1970): "We have made clear before that strong disagreement, even vehemently expressed, does not constitute a personal attack in the absence of an attack upon character or integrity." Review of the editorial remarks in question indicates that although those opposing the president, including yourself, were vehemently criticized for such opposition and your qualifications for the office of President of the College were sharply questioned, such statements did not attack or otherwise impugn your honesty, character or integrity in opposing Mr. McClintock or seeking such office, and, therefore, did not constitute personal attacks as defined by the Rules.

If a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can

be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Your letter contains no allegation that Station WILY has not afforded reasonable opportunity for the presentation of contrasting views on any controversial issue of public importance discussed in the editorials in question, nor is there any other evidence to indicate that the station has failed to comply with the fairness doctrine with respect to this matter. It is noted that both you and the other members of the Board of Trustees, as well as any others having contrasting views, were offered "equal time" by the station to reply to its editorials, and that some Trustees accepted such offer, although you did not. Upon these facts, it would appear that the station has taken appropriate steps to comply with its fairness doctrine obligations. Should the Commission receive information to the contrary, it will undertake such review and action as appears appropriate to the circumstances.

With respect to the accuracy of program material or allegations that a network, station or newscaster has distorted news or has staged or fabricated news occurrences, the Commission's policy is set forth in its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. As you will note, the Commission believes that it, as the governmental licensing agency, should not attempt to determine the "truth" of a given situation and whether a news report has given the "truth". Rather, it will take action in such cases only when it has substantial extrinsic evidence that the licensee has deliberately distorted its news reports or staged news events and otherwise deems it more appropriate to assure that a reasonable opportunity is afforded for the presentation of contrasting views.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
TEXAS COMMITTEE ON NATURAL RESOURCES,
DALLAS, TEX.
Concerning Fairness Doctrine Re Station
WBAP, Fort Worth, Tex.

FEBRUARY 12, 1973.

MR. EDWARD C. FRITZ,
Texas Committee on Natural Resources,
4144 Cochran Chapel Road,
Dallas, Tex.

DEAR MR. FRITZ: This refers to your letters of complaint against Station WBAP, Fort Worth, Texas, alleging failure of the licensee to comply with the requirements of the fairness doctrine in its presentation of viewpoints on the Trinity River Navigation Project and to the licensee's responses. We note that copies of the licensee's responses, including those dated December 13, 1972 and January 18, 1973, were sent to you.

The staff regrets its delay in dealing with your complaints. However, it was overwhelmed with complaints and inquiries related to the various political campaigns until Election Day, and therefore was forced to defer action on many other complaints, some of which it is only now able to resolve.

After careful analysis of your complaints and the licensee's responses, including those of December 13, 1972 and January 18, 1973, the staff cannot find the licensee's judgment to have been unreasonable regarding presentation of contrasting views here in issue. As you know, the Commission reviews fairness complaints only to the extent of determining whether the licensee's actions appear to have been reasonable and made in good faith.

We note, also, that the issue here is a continuing one, to which the station appears to be giving continuing coverage. In such situations, it is impossible to set a "cut-off" point for determination of fairness. However, although the presentation of views favoring the Trinity River Project appears to date to have occupied more air time on WBAP–TV than that of opposing views, an analysis of the material furnished by the licensee indicates that the disparity was not of a degree that would justify a determination that the licensee's judgment was unreasonable. As you know, the fairness doctrine does not require equality in time afforded opposing views such as is required for political candidates, but only that the licensee, having presented one viewpoint, afford reasonable opportunity for presentation of contrasting views.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
VOTERS ORGANIZED TO THINK ENVIRONMENT,
SAN DIEGO, CALIF.
Concerning Fairness Doctrine
Re Station KGTV

FEBRUARY 12, 1973.

MR. ALEX LEONDIS,
Chairman, Voters Organized To Think Environment,
5068 Windsor Drive,
San Diego, Calif.

DEAR MR. LEONDIS: This will refer to your letter of complaint, dated October 27, 1972, which was not received in this office until November 6, 1972, alleging that Television Station KGTV, San Diego, California, "has failed to provide equal coverage of political opinions expressed in their broadcasts." In particular, you state that your organization was the sponsor of "Proposition D" on the November 7 San Diego Ballott which would limit the height of buildings in the coastal zone of the city to 30 feet; that in an editorial broadcast October 17, Station KGTV expressed its opposition to the proposition in question; and that on October 18 the station broadcast an interview with a member of the City Planning Commission who urged rejection of the measure. You further state that although KGTV offered your organization "equal time" to rebut the October 17 editorial, the station refused your request for "equal time to interview another member of the City Government who has the opposite opinion from that expressed on October 18." You have asked the Commission to review the propriety of such refusal.

If a station presents one side of a controversial issue of public importance, it is required under the fairness doctrine to afford reasonable opportunity for the presentation of contrasting views. The fairness doctrine does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is within the discretion of the licensee to determine how best to present contrasting views with respect to matters of spokesman selection and program scheduling, format, and content and that the burden is on the complainant to show that the licensee has not acted reasonably and

in good faith. See *Letter to the Honorable Oren Harris*, 40 F.C.C. 2d 582 (1963); *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10416 (1964) (A copy of which is enclosed for your further information).

Applying these principles to your complaint, it does not appear that Station KGTV has failed to comply with the fairness doctrine with respect to the issue in question. Upon presenting its October 17 editorial in opposition to Proposition D, the station offered your organization, as sponsor of the measure, "equal time" to rebut the editorial. The correspondence which you have submitted indicates that such offer was accepted by your organization. Although the station refused your request for "equal time" to interview a particular member of city government whose views were opposed to those of the City Planning Commission member which were broadcast October 18, such refusal alone does not evidence that the station has not afforded a reasonable opportunity for the presentation of contracting views on the ballot proposition in question. As noted above, the licensee is not required to balance editorial with editorial or viewpoint with viewpoint according to a precise mathematical formula of "equal time". Nor is the licensee obligated to present the views of any particular group or individual. The underlying and controlling consideration in any question of fairness is whether the public has been afforded reasonable opportunity to inform itself on the particular controversial issue involved as evidenced by the entirety of viewpoints which have been presented in the station's overall programming on that issue. See *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367 (1969). In this regard, fairness is most concerned with the views which have been broadcast, not with the particular spokesmen which have been presented. You have submitted no information to indicate that KGTV, in its overall coveral of Proposition D (as opposed to the particular editorial, interview, and offer which you cite), has failed to afford reasonable opportunity for the presentation of contrasting views on that issue and thereby failed to recognize the right of the public to be fully informed. Thus, upon the facts which you have submitted, no violation of the fairness doctrine is evident.

The delay in answering your complaint is regretted; however, due to the late date of receipt of your letter, staff limitations, and the increased volume of complaints before the Commission regarding the recent elections, this response could not be forwarded until the present time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief*,
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-151

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re FORT SMITH TV CABLE CO., FORT SMITH, ARK. For Certificate of Compliance	CAC-24 (AR016)

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. Fort Smith TV Cable Company (FSTC) operates a cable television system at Fort Smith, Arkansas, in a smaller television market. The system presently provides its subscribers with the following television signals:

KTEW (NBC, Ch. 2), Tulsa, Oklahoma
KOTV (CBS, Ch. 6), Tulsa, Oklahoma
KTUL-TV (ABC, Ch. 8), Tulsa, Oklahoma
KFSA-TV (ABC/CBS/NBC, Ch. 5), Fort Smith, Arkansas
KFPW-TV (ABC/CBS/NBC, Ch. 40), Fort Smith, Arkansas
KARK-TV (NBC, Ch. 4), Little Rock, Arkansas
KATV (ABC, Ch. 7), Little Rock, Arkansas
KETS (Educ. Ch. 2), Little Rock, Arkansas
KTHV (CBS, Ch. 11), Little Rock, Arkansas
KGTO-TV (NBC, Ch. 36), Fayetteville, Arkansas

On March 14, 1972, FSTC filed, and subsequently amended, an application for a certificate of compliance proposing to add the following television signals:

KTVT (Ind., Ch. 11), Fort Worth, Texas
KDTV (Ind., Ch. 39), Dallas, Texas

Public notice of the application was given April 12, 1972. On May 12, 1972, KFPW Broadcasting Company, licensee of Station KFPW-TV, Fort Smith, Arkansas, filed an opposition, and FSTC has replied.

2. In its application, FSTC avers that it was authorized to carry KTVT and KDTV prior to March 31, 1972, pursuant to former Section 74.1105 of the Commission's Rules. FSTC contends that since the proposed signals were authorized, their carriage is grandfathered under the provisions of Section 76.65 of the Rules. KFPW-TV objects to the proposed carriage of the distant signals on the grounds that the addition of two independent signals will have an adverse

impact on the station's viewing audience. Notwithstanding the grandfathering provisions of Section 76.65 of the Rules, KFPW–TV argues that the Commission should apply the smaller market limitations of the Rules, restricting FSTC to one independent signal, since the system has never actually commenced carriage of either proposed signal.

3. We find that FSTC served proper notice of its intention to carry the proposed signals on all entitled parties, pursuant to former Section 74.1105 of the Rules. Since no objection to that notification was filed by any party, including KFPW–TV, we hold that FSTC fully complied with the provisions of the former rules and was authorized to carry the proposed signals prior to March 31, 1972. See *El Paso Cablevision, Inc.*, 27 FCC 2d 835 (1971). Therefore, carriage of KTVT and KDTV is grandfathered under the provisions of Section 76.65 of the Rules. As to KFPW–TV's argument that the Fort Smith cable system should not be permitted to carry the proposed signals because carriage of those signals was never commenced, we note that when the Commission reaffirmed the provisions of Section 76.65 on reconsideration, we stated at 36 FCC 2d 326, 351: "We will not disturb signals where rights have vested, even where the system has not gone into operation." The same judgment applies in the instant case where the right to carry particular signals has vested in an existing system by operation of former Section 74.1105; we will not disturb that right merely because carriage of the proposed signals has not commenced.

4. Turning to KFPW–TV's audience impact assertions and its request for special relief, the Commission addressed itself to such matters in paragraph 112 of the *Cable Television Report and Order*, 36 FCC 2d 143, 186–187 where it stated:

> We will, of course, consider objections to signal carriage applications and have retained special relief rules, but those seeking signal carriage restrictions on otherwise permitted signals have a substantial burden. Before restrictions are imposed in such cases, there will have to be a clear showing that the proposed service is not consistent with the orderly integration of cable television service into the national communications structure and that the results would be inimical to the public interest.

KFPW–TV has made no showing to support its assertion that the proposed signal carriage will have an adverse impact on the station's viewing audience, and has not otherwise met the "substantial burden" which the Commission has placed upon a party seeking carriage restrictions on otherwise permitted signals.

In view of the foregoing, the Commission finds that the grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition to Application of Fort Smith TV Cable Company" filed by KFPW Broadcasting Company IS DENIED.

IT IS FURTHER ORDERED, That the application (CAC–24) filed by Fort Smith TV Cable Company, Inc. IS GRANTED, and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R–74

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH–7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH–7262

APPEARANCES

Samuel Miller, on behalf of Erwin Gladdenbegk; *Joseph M. Oliver, Jr.*, on behalf of Charles R. Lutz; and *John T. Kelly*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted February 9, 1973; Released February 14, 1973)

BY THE REVIEW BOARD: NELSON, PINCOCK AND KESSLER

1. The above-captioned mutually exclusive applications for a new FM broadcast station to operate on 95.3 MHz at Shell Lake, Wisconsin, were designated for consolidated hearing by Commission Order, FCC 71–406, released April 21, 1971, 36 FR 8413. The issues encompassed inquiries into each applicant's efforts to ascertain community needs and interests and a comparison of the two applicants. The hearing was conducted before Administrative Law Judge, Millard French, who, in his Initial Decision FCC 72D–22, released March 28, 1972, found that both applicants had complied with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicant* 27 FCC 2d 650 (1971), and that the public interest would best be served by granting the application of Erwin Gladdenbegk and denying the mutually exclusive application of Charles R. Lutz. Both applicants filed exceptions to the Initial Decision and Lutz requested oral argument thereon. The Board has considered the Initial Decision, the exceptions thereto, the oral argument [1] and the record in this matter and is satisfied that the Initial Decision is correct. Therefore the Initial Decision as supplemented by our rulings on the exceptions set forth in the attached appendix is adopted by the Review Board.

2. Accordingly, IT IS ORDERED, That the application (BPH–

[1] Oral arugment before a panel of the Review Board was held on January 30, 1973.

7192) of Erwin Gladdenbegk IS GRANTED, and the application (BPH–7262) of Charles R. Lutz IS DENIED.

DEE W. PINCOCK,
Member, Review Board,
Federal Communications Commission.

APPENDIX

RULINGS ON THE EXCEPTIONS OF CHARLES R. LUTZ

Exception No.	*Ruling*
1	*Denied.* The only specific reference to the Indian population is at Tr. 67 where Mr. Lutz stated that there is an Indian reservation on the west side of the banks of the Bashaw with a population of 38 Indians, and at Tr. 45 where mention is made of an Indian reservation at Clam Falls, described as being "in that general area, west of Cumberland." The material in Lutz's application which was cited in the exceptions is not a part of the hearing record. The Initial Decision at ¶ 6 fairly reflects the record.
2, 4	*Denied.* It is apparent from the accompanying descriptive material that each person listed in paragraphs 17 and 19 is in fact a community leader. Gladdenbegk's failure to list community leaders and members of the general public separately, while not the most effective way to present the information, does not destroy the exhibit's usefulness.
3	*Denied.* It is apparent from the accompanying descriptive material that the persons listed in ¶ 18 were properly classified by the Presiding Judge as members of the general public.
5	*Denied.* We cannot accept Lutz's contentions that Gladdenbegk has failed to adequately interview a cross section of community leaders and the public to ascertain the needs and interests of the area to be served. Lutz contends that American Indians constitute a "significant group" within Gladdenbegk's proposed service area and that because Gladdenbegk failed to interview Indian leaders he has not met his burden of proof under the *Suburban* issue and his application must therefore be denied. Lutz's argument must fall because the record does not support his contention that American Indians constitute a "significant group" within the proposed service area. There is no evidence that any Indians reside in Shell Lake, the applicant's principal community. Moreover, it is not clear from the record whether Clam Falls which is described at Tr. 45 as west of Cumberland is within the 1 mv/m contour of Gladdenbegk's proposed station. Gladdenbegk complied with the requirements of the *Primer, supra* by submitting demographic data concerning Shell Lake and Washburn County. He then proceeded to make his survey based on that data. In this connection, Lutz concedes (Brief in Support of Exceptions, Fn*) that exact and complete figures for the alleged Indian population do not appear in the record. In such a situation it is clear that if Lutz had knowledge of such populations and wished to challenge the adequacy of Gladdenbegk's survey, it was his responsibility

Exception No.	*Ruling*
	to show by means of supporting data, that significant groups were omitted. *Primer, supra* at page 663. This he has not done. Neither has Lutz rejected Gladdenbegk's testimony that his attempts to "get ahold" of Indian leaders has been an impossible job (Tr. 45).
6	*Denied.* Both applicants purport to devote full time to the management of the proposed FM station and both have other business obligations. The Presiding Judge's conclusion that neither applicant is to be preferred for his integration into the management of the station is fully warranted by the record.
7	*Denied* In the circumstances of this case, Gladdenbegk, who has only a small CATV system which originates no local programming, must be preferred over Lutz who owns the only AM station in the community and who proposes to simulcast during the hours his daytime only station operates.
8	*Denied.* The record and the findings of fact fully support the Presiding Judge's conclusion.
9, 10	*Denied* for the reasons set forth in the foregoing rulings.

RULINGS ON EXCEPTIONS OF ERWIN GLADDENBEGK

Exception No.	*Ruling*
1, 2, 3	*Denied:* In view of all the facts in this case the additional findings and conclusions concerning Lutz's ascertainment of communty needs are not required.

109 028—73——3

F.C.C. 72D–22

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH–7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH–7262

APPEARANCES

Stephen A. Gold and *Samuel Miller*, on behalf of Erwin Gladdenbegk; *Charles R. Lutz*, pro se; and *John T. Kelly*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Issued March 24, 1972; Released March 28, 1972)

PRELIMINARY STATEMENT

1. By order released April 29, 1971 the Commission designated for hearing the applications of Erwin Gladdenbegk (hereinafter Gladdenbegk) and Charles R. Lutz (hereinafter Lutz), each requesting a construction permit for a new FM station to be operated on Channel 237 at Shell Lake, Wisconsin, upon the following issues:

1. To determine the efforts made by Erwin Gladdenbegk to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.
2. To determine the efforts made by Charles R. Lutz to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.
3. To determine which of the proposals would, on a comparative basis, better serve the public interest.
4. To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

With the exception of these specified issues, the order provided that "the applicants are qualified to construct and operate as proposed."

2. In the designation order, the Commission stated that under the standard comparative issue consideration would be given to the areas and populations which each applicant would serve with the 1 mv/m contour, together with the availability of other primary aural services in such areas.

3. A prehearing conference was held on June 8, 1971. Exhibits were exchanged between the parties on September 16, 1971. The hearing in

this proceeding was held on November 1, 1971, and the record was closed on that date.

4. Proposed findings and conclusions were filed by the Broadcast Bureau, by Gladdenbegk and by Lutz on January 12, 13 and 17, 1972, respectively. Lutz filed reply findings and conclusions on February 7, 1972.

FINDINGS OF FACT

5. This proceeding involves two mutually exclusive applications for construction permits to establish a new Class A FM broadcast station at Shell Lake, Wisconsin, to operate on Channel 237A (95.3 MHz) with an effective radiated power of 3 kilowatts. Erwin Gladdenbegk proposes to construct at a site about 5 miles south-southwest of Shell Lake with an antenna height of 300 feet above average terrain. Charles R. Lutz proposes to mount his antenna on the existing tower of WCSW (AM) which is about 4 miles south-southwest of Shell Lake and attain a height of 265 feet above average terrain.

6. Shell Lake is in northwestern Wisconsin about 70 miles south of Superior, Wisconsin, and 80 miles northeast of Minneapolis, Minnesota. Shell Lake has a 1970 population of 928 and is the county seat of Washburn County (population 10,601). The largest community in Washburn County is Spooner, which has a population of slightly over 2,400. The only other community of substantial size within the proposed 1 mv/m contour is Cumberland (population 1,839) which is located in the adjacent county of Barron. Located west of Cumberland is an Indian reservation. Washburn County is very sparsely populated with only 13 persons per square mile. The county is almost completely white, with only 14 blacks in the entire county (1970 Census). However, 24.2% of the county's population is of foreign stock. The county has an unusually high proportion of people 65 and over, with 16.4% of the population in that category, as compared with 10.2% for the state. The nearest urbanized area and the nearest SMSA are centered about Duluth and adjacent Superior City, Wisconsin. The only broadcast station in Shell Lake is WCSW (940 kHz, 1 kw, day, II) which is licensed to applicant Lutz.

7. According to the 1960 Census, 13% of the work force was engaged in manufacturing, with 34% in white collar work. The median income per family is lower than the state average—$3,859 compared with $5,926 for the state. The county has $8,566,000 in bank deposits with a tax base of only $98 per capita (1964 Census). The county has 27 manufacturing establishments (1963 Census). There are 209 retail establishments with a payroll of $16,302,000 (1963 Census). The county is largely dependent on agriculture for its economy. There are 695 farms with 31.5% of the land in farms (1964 Census). The average farm has 237 acres and sells $5,979 worth of products per year. Shell Lake is noted for the following industries and products: boatworks, creameries, cheese factory, dairy, poultry, corn, peas and potatoes, with farming being the chief occupation.

8. Although both proposals would serve more than 500 square miles of area, neither would serve as many as 16,000 persons within their

F.C.C. 72D-22

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN GLADDENBEGK, SHELL LAKE, WIS.	Docket No. 19211 File No. BPH-7192
CHARLES R. LUTZ, SHELL LAKE, WIS. For Construction Permits	Docket No. 19212 File No. BPH-7262

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8. Although both proposals would serve more than 500 square miles of area, neither would serve as many as 16,000 persons within their

1 mv/m contours. Neither proposed contour would reach Rice Lake. Statistics on their coverage are as follows:

	Area (sq. mi.)	Population
Gladdenbegk	713	15,429
Lutz	592	13,518
Difference	121	1,911

9. Gladdenbegk's proposed 1 mv/m contour would encompass all of the Lutz 1 mv/m contour and additionally extend 2 to 3 miles farther from Shell Lake in southerly and westerly directions to serve 1,911 more persons in an area of 121 square miles. Thus Gladdenbegk would serve 20.4% more area and 14.1% more population than would be served by Lutz. The following are the distances to the respective 1 mv/m contours from Shell Lake:

	Lutz (miles)	Gladdenbegk (miles)
North	12	12
Northeast	10	10.5
East	10	10.5
Southeast	12	13.5
South	15.5	18
Southwest	15.5	18.7
West	17.5	18.7
Northwest	14.7	15

10. The entire areas within both proposed 1 mv/m contours are now served by only FM station, WJMC–FM, Rice Lake, Wisconsin. AM station WCSW, Shell Lake, also serves 100% of both proposed service areas daytime. WCCO, Minneapolis, provides AM service both day and night to all of the proposed FM service areas of both applicants. Thus, either proposal would bring a fourth daytime and third nighttime aural service to their service populations.

THE APPLICANTS

Erwin Gladdenbegk

11. Mr. Gladdenbegk was born in Chicago, Illinois, and graduated from DeForest Electronics Trade School in that city in 1940. He was employed by Zenith Radio Corporation until 1949 when he received an FCC first-class license and joined WLS, Chicago, as transmitter engineer. In 1951 he moved to the Shell Lake area and opened a TV sales and service store in that city. In August 1970 he moved to Shell Lake proper.

12. Mr. Gladdenbegk owned and operated a television sales and service store in Shell Lake from 1951–1959. In 1962 he constructed a CATV system in Shell Lake which he still owns and operates as a sole proprietorship. From 1968 to 1970, he was manager and 50% owner of Station WCSW in Shell Lake, Wisconsin. For many years, Mr. Gladdenbegk has been associated with Shell Lake civic organizations,

such as the Masons, Chamber of Commerce, Methodist Church, Lions, Shell Lake Development Corporation and Shell Lake Cemetery.

13. Mr. Gladdenbegk's CATV system has approximately 200 subscribers, all in Shell Lake. This system brings into the area television programs of stations in Minneapolis, Eau Claire and Duluth. He does not now, nor does he, propose to originate any programs over the system. In the event his subject application is granted, Mr. Gladdenbegk intends to manage the FM station on a full-time basis and has made arrangements for someone else to take over the management and operation of the CATV system.

Charles R. Lutz

14. Mr. Lutz is a lifelong resident of the city of Shell Lake. He has served on both the Shell Lake City Council and the Washburn County Board of Supervisors, and has been a candidate for the Wisconsin State Assembly. In addition, he has served as chairman of the Washburn County Red Cross, and is an active member of the Shell Lake Volunteer Fire Department and of the Shell Lake and Cumberland Chambers of Commerce. He is also a member and past officer of American Legion Post 225, Shell Lake, and a member of the local Disabled American Veterans Organization. Lutz is also a member of the Brill Area Sportsman's Club and a past member of the Elks Club and of the Shell Lake Industrial Development Committee. He has been associated with several business enterprises in Shell Lake, including Northern Credit Finance Corporation, Thorp Finance Corporation and Lutz Sales and Service, a local automobile dealership.

15. From December 1, 1968 until the present, Lutz has owned and operated WCSW–AM in Shell Lake. From December 1, 1968 until April 1970, Messrs. Lutz and Gladdenbegk were partners in the ownership of WCSW. Since April 1970, Lutz has been the sole owner of the station. The studios and offices of WCSW are located in Lutz' home, where he will also locate the studios and offices of his proposed FM station. Lutz is presently the full-time manager of WCSW.

Issue 1—Suburban Issue—Gladdenbegk

16. With respect to this issue, the designation order stated:

"In *Suburban Broadcasters*, 30 FCC 951 (1961), our Public Notice of August 22, 1968, FCC 68–847, 13 RR 2d 1903. *City of Camden (WCAM)*, 18 FCC 2d 412 (1969), and our *Primer on Ascertainment of Community Problems by Broadcast Applicants*, FCC 71–176, released February 23, 1971, we indicated that applicants were expected to provide full information on their awareness of and responsiveness to local community needs and interests. In this case, neither applicant has shown that it has contacted a representative cross-section of the area nor has Gladdenbegk adequately provided the comments regarding community problems obtained from such contacts. In part, Lutz has provided satisfactory comments. Neither has adequately provided a listing of specific programs responsive to specific community needs as evaluated. As a result, we are unable at this time to determine whether either of the applicants is aware of and responsive to the needs of the area. Accordingly, *Suburban* issues are required."

17. After receipt of the above order, Mr. Gladdenbegk conducted a further survey of the coverage area on May 5, 6 and 7, 1971. In the community of Shell Lake, he personally interviewed the following

community leaders and submitted comments regarding community problems that were obtained from such interviews:

Mr. Cyrus Atkinson, Mayor
Mr. Nolan Penning, President of City Council
Mr. John McNabb, past commander, American Legion; past president, Chamber of Commerce.
Mr. Wilson H. McLean, head of job training programs
Mr. Darrell Aderman, high school music teacher; head of Indianhead Arts Center
Mr. Charles H. Lewis, president of Board of Education; president, Wisconsin School Board Association
Mr. Joseph Rounce, member of Washburn County Board; manager of Allen Gas & Oil Co.
Mr. Delbert Soholt, director of Lions Club; hardware store owner
Mrs. Anna Bohn, president of American Legion Auxiliary #225
Mr. William Albright, director of community action program; also resort owner
Mr. Ray Bennett, park supervisor
Mr. Dudley Livington, commander of American Legion Post #225
Mr. Leo Remelard, night club owner, Aero Club member
Mrs. Charles H. Lewis, president, Wisconsin Federation of Women's Clubs, 10th District
Mr. Roland Erickson, high school guidance counselor and manager of housing authority
Mr. Donn Dinnics, secretary of Shell Lake Development Corporation
Mr. Robert Walner, manager, Farmer's Union Co-op
Mr. Richard Rydberg, president of Chamber of Commerce; insurance representative
Mr. John Hoar, retired school superintendent
Mr. Dave Pieper, treasurer, Democratic Party of Washburn County
Mr. Warren Winton, Washburn County Judge
Mr. John Bakker, postmaster
Father Paul Boshold, Catholic Church
Mr. Harold Bennewitz, president of National Farmers Organization, Washburn County

18. In the aforementioned survey, Mr. Gladdenbegk also interviewed the following members of the general public in Shell Lake and received comments and suggestions from them:

Mr. Robert Rezarch, owner of Shell Lake Feed Mill
Miss Alda Johnson, private citizen, 77 years old
Mr. Lloyd Bohn, commander, W.W.1 Barracks 3499
Mr. Glen Peterson, post office employee
Mr. Ernie Swanson, farmer
Mr. Hubert Smith, superintendent of schools
Mr. Mark Bruce, student
Mrs. Donald Bruce, housewife, mother of four children

Mr. Howard Nebel, hotel owner
Mr. Ralph Van Meter, police officer
Mr. Victor S. Anderson, farmer

19. Mr. Gladdenbegk also personally interviewed community leaders in the following outlying communities during the May 1971 survey:

In Spooner:

Mrs. Marshall Peterson, secretary of 10th Congressional District of the Republican Party
Mr. Sheldon Kliman, member of the board of directors of the National Theater Owners Association
Mr. Maurice Costello, past president of the Spooner Chamber of Commerce
Mr. Kenneth Schricker, head of Washburn County Welfare Services
Mr. Hugh Schlief, post office employee
Mrs. Woodrow Brown, president of the Washburn County 4-H Club
Mr. James Johnson, Washburn County Youth Agent
Father John E. Amberling, pastor, Episcopal Church

In Cumberland:

Mr. Lloyd Wikre, real estate company
Mr. Louis DeGidio, director, Cumberland Chamber of Commerce and member of City Council and Kiwanis Club
Mr. Ken Barrows, director, Chamber of Commerce, and City Council member
Mr. Charles Cristianson, alderman, City Council; past director, Chamber of Commerce
Mr. John Haley, secretary, Chamber of Commerce
Mr. Phil Mayor, department store owner; past president, Chamber of Commerce

In Sarona:

Mr. Roy Humilcek, treasurer of Washburn County
Mrs. W. F. Sauer, deputy treasurer of Washburn County

In the listing of Shell Lake community leaders, it is noted that Mr. Robert Walner, manager of the Farmer's Co-op, covers Spooner and Sarona, as well as Shell Lake.

20. In the case of all the foregoing interviews, Mr. Gladdenbegk questioned each as to what the needs and interests of the community were and how an FM station in the area could help solve the problems. A summary of the problems and needs elicited shows the following:

Lake pollution.
Better relations between city and county law enforcement officers.
Need for more small industry.
Better communication with the public.
Need of the Indian community for more jobs for the less educated.
Job training for low income groups and youth.

Publicity needed for poverty level programs.
Recreational area for young people.
Ecology.
More housing.
Better relations between school board, teachers and public, more publicity of high school activities and coverage of local events at night.
Drugs.
Vandalism.
Juvenile delinquency.
More information on the laws of the city and county.
Enforcement of local laws.
Unemployment.
Weather, news, especially at night.

21. In order to satisfy the needs found in his survey, Mr. Gladdenbegk proposes the following programs:

a. *What's your opinion?* A daily 15-minute talk and interview program aired at noon with a repeat at 6:00 p.m. Listeners can provide questions either by letter or by telephone. Various community leaders will be interviewed on the program to discuss such problems as lake pollution, police-sheriff relations and drug abuse among teen-agers.

b. *Weather roundup.* Four times daily, 7:00 a.m., 12:15 p.m., 6:15 p.m. and 10:00 p.m. He will use the best source available to teletype, Weather Bureau at Duluth, La Crosse and Madison, plus county sheriff's radio contacts to follow storm patterns locally. Bulletins will be given whenever needed.

c. *For your information.* Five-minute talk show given by law enforcement people and other groups interested to inform the public on what our community laws are in regard to drug abuse, traffic laws, city ordinances, state laws, etc. Program is aired three times a day, morning, noon and evening. Some repeats of the same shows will be given, if needed.

d. *Live stock markets.* From teletype. South St. Paul and local prices would be aired from 7:00–7:30 a.m., noon and 6:00–6:30 p.m.

e. *Your schools report.* Saturday, 12:30–1:00 p.m., repeated at 6:30 p.m. A program designed to meet the needs of communications between school administrators, school board members, teachers, students and the general public.

In addition he proposes to devote 11 hours, 50 minutes to news during a typical week of 126 hours (9.5%). Mr. Gladdenbegk also proposes to present local high school sports and activities on an as-needed basis.

Issue 2—Suburban Issue—Lutz

22. After receipt of the Commissioner's order of designation with the statement set forth in paragraph 16, *supra*, Mr. Lutz conducted another survey of persons in the service area. He interviewed community leaders and the general public, but concentrated his efforts mostly in the rural areas, which comprise about 62% of the population within the service area.

23. Among the civic leaders that were interviewed in the area are the following:

Mr. Milo Schieffer, Chairman of Oak Grove Township, Barron County
Mr. Ed Jeffery, Supervisor and Town Chairman, Clam Falls, Loraine

Mr. Jess Okerlund, Town Chairman, Sand Lake
Mr. Bob Meronk, Supervisor and Town Chairman, Town of Scott, Burnett County
Mr. Joe Pepouski, Chairman, Maple Plaine, Barron County
Mr. Harold Stromberg, Supervisor of Sarona Township
Mr. Ernest Norton, Clerk, Beaver Brook Township
Mr. Ronald Minkel, Chairman, Bear Lake
Mr. Ray Givings, Supervisor of Chicog, Brooklyn and Casey Townships
Mrs. Gladys Bearhart, Maple Plaine Township, wife of Indian Chief
Mr. Marvin Coleman, retired president, Oil, Chemical and Atomic Workers International Union
Mrs. Marvin Coleman, vice president, Local Minnesota Mining Union
Mr. William Schreiber, Chairman, Evergreen Township; president of Spooner Creamery Board
Mr. Otto S. Keuhn, Town Chairman and Supervisor, Roosevelt Township
Father Paul Boshold, Priest, Shell Lake Catholic Church
Mr. George Burford, Mayor, Village of Webster
Mr. Harold Frogg, Alcoholic Counselor for Indians
Violet West, President of Haugen Village
Mr. Sam Bearhart, member of Tribal Council
Mr. Winston Christner, Chairman of Rusk Township, Burnett County

24. In addition to the foregoing civic leaders, Mr. Lutz interviewed over one hundred members of the general public, including thirteen from Shell Lake itself, and received comments on the problems and needs of the service area.

25. From his interviews, Lutz has indicated a number of the needs and interests of the area, and his evaluation thereof, as follows:

Weather and the condition of the roads, especially in the case of many elderly people who reside on small farms; during the winter months there would be the necessity of warning them or getting them out in case of illness or accident.
Zoning.
Alcoholism.
Drugs.
Recreational projects for children and young people.
More parks.
Center for community gatherings.
Lack of industry.
Housing.
Employment of youth.
Taxes too high for people on fixed incomes.
Tax relief for low income families.
Taxes too high for sizes of towns.
Pollution.

Excessive dumping of waste on township dumps.
Roads need improvement.
Stricter law enforcement.
Improved telephone communications.

26. Lutz proposes to simulcast the programs of daytime Station WCSW and the proposed FM station. The programming to be simulcast would extend from the time the AM and the FM stations sign on at 6:00 a.m. until the AM sign off, which varies from month to month. The FM would sign off at midnight. On this basis, about 71% of the FM station's programming would be simulcast over WCSW.

27. To satisfy the needs of the area that were found in his surveys, Mr. Lutz proposes the following programs:

a. *Editorial comment*—A telephone call-in program Monday–Saturday inclusive, from 9:00 to 9:55 a.m.

b. A weekly taped program (day of week would vary) from 6:35 to 6:40 a.m. This would consist of talks by the zoning administrators of Washburn and adjoining counties.

c. *Meet your government*—Sunday, 2:00–2:30 p.m. Once a month this program would take up the problems of zoning and include tapes or live talks by zoning administrators, town chairmen and supervisors, and other people interested. On other Sundays this program would present information on Indian language and traditions and discuss Indian housing. On other occasions, it would consist of interviews with leading citizens and officials of Burnett as to the possibility of new industries.

d. *The zoning problem*—Proposed to be broadcast once a month on a weekday between 8:00 and 8:30 p.m. This would be a taped replay of one of the "Meet Your Government" programs referred to above.

e. A program of Indian music monthly on Sunday from 8:00 to 9:00 p.m.

f. A program for youth employment and recreational areas and facilities. It is proposed to broadcast this program from 10:00 to 10:30 a.m. on Saturday. It would consist of taped interviews with some of the youth leaders in Burnett County and also in the area of Haugen. On occasion there would be programs for the Indianhead Arts Center activities consisting of such matters as broadcast of musical events, a talk by one of the athletes and broadcast by artists assisting the students who might be attending classes.

In addition to the above programs, Mr. Lutz proposes hourly weather reports with frequent weather reports in the early morning and during the noon hour. News and sports would be broadcast several times a day, and local news would be incorporated in the ten-minute weather and news program, from 8:35 to 8:45 a.m. After the AM sign off, Lutz would continue to give weather, news and sports on a schedule similar to the above until 12:00 midnight.

Issue 3—Comparative Issue

28. Since findings encompassing this issue have been made hereinbefore, it is not deemed necessary to repeat them at this point in the decision.

ULTIMATE FINDINGS AND CONCLUSIONS

1. Authority to use FM Channel 237A (95.3 MHz) at Shell Lake, Wisconsin, is sought by two applicants, Erwin Gladdenbegk and Charles R. Lutz each proposes 3 kw ERP, the former at 300 ft. HAAT and the latter at 265 ft. HAAT.

2. Shell Lake has a population of 928 and is the county seat of Washburn County (population 10,601). It is situated in the northwestern part of the state and is about 70 miles south of Superior, Wisconsin. There are only two other communities of any substantial size inside the proposed 1 mv/m contour of either station, viz: Spooner (population 2,444) and Cumberland (population 1,839).

Issues 1 and 2—Suburban

3. The findings hereinbefore show that each applicant has defined the area to be served, and has conducted adequate surveys of such area. In these surveys, each has interviewed an adequate cross section of the community leaders and the public to ascertain the problems and needs that exist. The surveys were made by the principal of each applicant or under his direct supervision. Demographic information has been submitted showing that a cross section of the community leaders have been contacted. The community problems found have been listed and the various individuals contacted have been identified by name, position and organization. Each applicant has submitted his evaluation of the needs and problems that were discovered during the surveys he conducted, and proposed programming that will deal with these needs. The title, time, duration and frequency of broadcast and descriptions of those programs have been given in the findings. A comparison of the evidential showing of each applicant with the requirements of the *Primer* leads to the conclusion that each has adequately met the burden under the *Suburban* issue designated against him.

Issue 3—Comparative

4. In the area of integration of ownership and management, neither applicant is entitled to a preference over the other. Each owns 100% of his application and each will devote full time to the management of the proposed station.

5. With respect to the criterion of diversification of the media of mass communications, the findings show that Mr. Gladdenbegk owns a CATV system in Shell Lake that has about 200 subscribers. Mr. Lutz is the sole owner of radio broadcast station WCSW, a daytime only operation in Shell Lake, that serves approximately the same area proposed to be served by the FM station. It further appears that Mr. Lutz proposes to simulcast the programming of WCSW and the proposed FM station during the AM station's operation. Thus a grant of the Gladdenbegk application would bring Shell Lake and the surrounding area a new and different daytime service. A grant of the Lutz application would give him the only two radio facilities in Shell Lake, daytime, with the same programming on both stations. In view of the foregoing it is concluded that the Gladdenbegk application is entitled to some preference in the major criterion of diversification.

6. Insofar as the factor of local residence is concerned, the findings reveal that Mr. Gladdenbegk has been a resident of the Shell Lake area for over 20 years and a resident of Shell Lake proper since August 1970. Mr. Lutz has been a virtual lifelong resident of Shell Lake. Each applicant has resided in the area a sufficient length of time to become conversant with its problems in a general way. Since area familiarity

does not, per se, entitle an applicant to a preference, it is concluded that neither applicant is entitled to a preference over the other in the realm of local residence.

7. Under the terms of the designation order, comparative consideration is to be given to the areas and populations which each applicant would serve with his 1 mv/m contour. According to the findings, the Gladdenbegk application would serve 1,911 more persons in an area of 121 square miles located south and west of Shell Lake than would the Lutz application. All of both service areas is served by FM Station WJMC–FM, Rice Lake, Wisconsin; full time AM Station WCCO, Minneapolis, Minnesota; and AM Station WCSW, Shell Lake, which operates daytime only. Thus, either proposal would provide a first FM outlet day and night to Shell Lake, as well as a second aural outlet daytime and a first aural outlet nighttime to the community. Either proposal would provide a second FM service day and night, and a fourth aural service daytime and a third aural service nighttime to the proposed service area. On the basis of the Gladdenbegk application providing service to 1,911 more persons in the area than would the Lutz application, Gladdenbegk is entitled to a preference in this category.

8. In summary, each applicant has met his burden on the *Suburban* issue, and, thus, each is qualified to construct and operate his FM station as proposed. On a comparative basis, neither applicant is entitled to a preference over the other with respect to the criterion of integration, or in the area of local residence. In the criterion of diversification, Mr. Gladdenbegk has been awarded a slight preference. Also, he has been awarded a preference over Mr. Lutz for providing service to more persons and areas within his 1 mv/m contour.

9. Upon the basis of the foregoing findings and conclusions, and the entire record in this proceding, it is concluded that the public interest, convenience and necessity would be served by a grant of the Gladdenbegk application and a denial of the Lutz application.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by any of the parties or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Erwin Gladdenbegk for a construction permit for a new FM station to operate on Channel 237, 95.3 MHz, at Shell Lake, Wisconsin, IS GRANTED, and the application of Charles R. Lutz for the same facility IS DENIED.

MILLARD F. FRENCH,
Hearing Examiner,
Federal Communications Commission.

F.C.C. 73-183

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF GROSSCO, INC., LICENSEE OF STATION WEXT, WEST HARTFORD, CONN.
For a Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 20, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. Now under consideration are: (a) our letter of July 26, 1972, notifying Grossco, Inc. (Grossco), licensee of Station WEXT, West Hartford, Connecticut, of its apparent liability for a forfeiture of $4,000; and (b) Grossco's response to that letter, filed August 21, 1972, as supplemented by a letter dated November 20, 1972.[1]

2. The Notice of Apparent Liability cited four instances where Grossco apparently violated Section 73.112(a)(2)(i) of our Rules. In light of Grossco's response it appears that this rule has not been violated. Grossco states that two of the four commercials cited as not logged but broadcast were network commercials not required to be logged by the station, and that the other two commercials were broadcast during a different quarter-hour segment of the hour than the segment in which they were logged.

3. Based on a comparison of the station's logs and recordings of the station on four separate days, Grossco was found to have apparently violated Section 73.112(a)(2)(ii) in that it was inaccurately logging the duration of commercials.[2] The specific details were set out in the Notice. However, so that the substantial degree of error in Grossco's logs can be fully understood, we have set out the details of one of the monitored periods in the attached Appendix. A summary of the information for all four days shows the following:

[1] The supplemental material was provided in response to a staff letter asking for clarification of certain matters.

[2] Grossco did not elect to show in its logs the total duration of commercial matter in each hourly segment. Instead, it elected to log the duration of each commercial as is permitted under Section 73.112(a)(2)(ii). It is essential, therefore, that each commercial be accurately logged.

Date	Time of broadcast	Actual commercial duration (minutes: seconds)	Logged commercial duration (minutes: seconds)	Difference (minutes: seconds)
Jan. 20, 1972	3:45 to 4:45 p.m.	24:46	20:40	4:06
Jan. 21, 1972	7:15 to 8:45 a.m.	35:07	30:20	4:47
Mar. 7, 1972	4:33 to 5:58 p.m.	23:27	17:40	5:47
Mar. 8, 1972	6:67 to 7:57 p.m.	18:02	16:00	2:02
Totals	4 hours, 55 minutes	101:22	84:40	16:42

Thus, while the station was monitored, the total actual duration of commercials exceeded the total logged duration by 19.8 per cent. Moreover, of the 98 commercials broadcast during the monitored periods, 58 (59.2 per cent) were logged inaccurately as to their duration.[3]

4. In its response, Grossco concedes that the rule was violated, but states that the inaccurate logging was the result of "minor" staff operational error; that subsequent to our investigation of the station, a strict policy was put into effect to prevent this type of error; that this strict policy has resulted in exemplary operations, especially in the logging of commercials; and that no harm ever resulted to an advertiser or to the public interest. Unlike Grossco, we do not consider the violations to be "minor." The purpose of our program logging rules is, among other things, to make available to us specific information on programs broadcast, the types of such programs, and the duration of the advertising messages. To the extent to which the programming logs are falsified or substantially inaccurate, therefore, the integrity of our regulatory process is threatened. Furthermore, logging violations such as those here indicate lack of adequate supervision and control of the licensee over the operation of its station. The assertion that the logging violations resulted from staff errors does not exculpate Grossco, since it is responsible for the acts of its employees, *Eleven Ten Broadcasting Corporation*, 32 FCC 2d 706 (1962). When violations of rules are brought to the licensee's attention, corrective action is expected. However, past violations are not excused by subsequent corrective action, *Executive Broadcasting Corp.*, 3 FCC 2d 699 (1966). In sum, Grossco's response provides no reason to reduce the forfeiture as to the substantially inaccurate logging of the duration of commercials.

5. The Notice also found apparent violations of Section 73.119 of our Rules and Section 317 of the Communications Act for failure to give the required sponsor identification of 18 commercials. In view of Grossco's response, it appears that appropriate sponsor identification was given as to 4 of the 18 instances cited in the Notice.[4] There remains for consideration the 14 commercials promoting a concert by Jerry Lee Lewis that were paid for by Country Music Productions.

[3] In view of Grossco's response, minor downward adjustments have been made in the figures set out in this paragraph, compared to the figures set out in the Notice of Apparent Liability.

[4] The four commercials referred to are three commercials purchased by Rodco and one purchased by Muntz TV.

At the end of the commercial, a statement was made that tickets for the concert could be purchased at the Belmont Record Shop. In its response, Grossco states that Country Music Productions and Belmont Record Shop are commonly controlled corporations doing business from the same location and having the same employees. Grossco apparently takes the position that the mention of one corporation is sufficient sponsor identification for commercials purchased by the other. We disagree. Although the two corporations may be commonly controlled, they are separate legal entities and sponsor identification cannot be used interchangeably. Moreover, the statement that tickets can be purchased at Belmont Record Shop would be an insufficient identification for a commercial purchased by that company. Such a statement does not "fully and fairly disclose" [Section 73.119(e)] the sponsor because there is no necessary correlation between a ticket agent and the sponsor of the event advertised. Advertisements for concerts often state that tickets may be bought at many stores which are not producers of the concerts or sponsors of the advertisements.

6. Grossco contends that the violations were not willful and generally asserts that the amount of the forfeiture is excessive. Since we find that the violations are repeated, we need not reach the question as to whether they were willful, *Paul A. Stewart*, FCC 63–411, 25 RR 375 (1963). In determining the amount of a forfeiture we consider several factors, including the number, seriousness and duration of the violations, and the financial condition of the licensee. Here the licensee has furnished no evidence to establish that the most serious violations cited in our Notice did not occur. However, in view of the fact that it claims that the cited violations of Section 73.112(a)(2)(i) did not occur, and has furnished evidence that 4 of the 18 commercials cited as lacking correct sponsorship identification were correctly identified, we have determined to reduce the amount of the forfeiture from $4,000 to $3,000.

7. Accordingly, IT IS ORDERED, That Grossco, Inc., licensee of Station WEXT, West Hartford, Connecticut, FORFEIT to the United States the sum of three thousand dollars ($3,000) for repeated violations of Sections 73.112(a)(2)(ii) and 73.119 of the Commission's Rules and Section 317 of the Communications Act of 1934, as amended. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of the Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Grossco, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

JANUARY 21, 1972

Time (a.m.)	Commercial	Actual duration	Logged duration
7:15	D-Con	60	60
	E. P. Hayes	1:22	60
	Brodie Mountain	46	30
	Carbone Auto Body	45	60
	Country Music Productions	1:23	60
7:30	Backus Motors	1:10	60
	Fred Locke Stereo	55	60
	Rodco	57	60
	Empire Pizza	1:20	60
	Country Music Productions	1:10	60
7:45	Gelcotoy	2:30	2:30
	Cookes Tavern	1:14	60
	Fred Locke Stereo	05	10
	Sam's Mobile	37	60
	N.E. Tractor	1:25	10
	Country Music Productions	60	60
8:00	Pennzoil	60	60
	Barrieau Moving	1:12	90
	Brodie Mountain	47	30
	Country Music Productions	1:08	60
8:15	Arthur Drug	30	30
	Jordan & Sumera Tire	1:07	30
	Carbone Power Equipment	60	60
	Lipton Tea	60	60
	N.E. Tractor	1:42	10
	Country Music Productions	1:14	60
8:30	E. P. Hayes	1:23	60
	Monaco & Sons	1:08	1:30
	Georgetown	60	60
	Carbone Auto Body	47	30
	Westinghouse Securities	60	60
8:45	Shamons Cafe	30	30
	Sears	60	60
	Total	35:07	30:20

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
ITT WORLD COMMUNICATIONS, INC., WASHINGTON, D.C.
For Inspection of Records Concerning the Interim Communications Satellite Committee 62d Meeting

JANUARY 31, 1973.

MR. TERRENCE L. SLATER,
Washington Counsel, ITT World Communications, Inc., 1707 L Street NW., Washington, D.C.

DEAR MR. SLATER: This is in reply to your letter of January 5, 1973 requesting authorization to inspect and copy the "Summary Record of the 62nd Meeting of the ICSC held 13–20 December, 1972," and "all revelant correspondence between and among United States Government agencies, and between such agencies and COMSAT, relating to the 62nd Meeting." You also request that the entity submitting this material file its response within a shorter period of time than the usual fifteen days provided in Section 0.461(b) of the rules, and that the Commission postpone acting on the request of the Communications Satellite Corporation (Comsat) for approval of the INTELSAT IV 1/2 series until after you have had an opportunity to inspect and comment to the Commission on the requested material.

As your letter recognized, at the time you requested this material Commission action on the proposed INTELSAT IV 1/2 series was imminent, and it was necessary for the Commission to act on this program in order to permit time for coordination, among the various United States Government agencies, of the official United States position on the proposed satellite series to be presented to the Interim Communications Satellite Committee (ICSC) at its next meeting which commenced January 24, 1973. It should also be noted that the requested material is not the exclusive concern of this agency, that several agencies have an interest in determining whether it should be made available, and that the response of Comsat to your request was not sent until January 17, 1973.

I regret that the necessity for Commission action has made it impossible to comply with your request that the Commission delay further action on the proposed satellite series. If you are still interested in examining the material, however, I believe that it would be in the public interest to permit you to inspect and copy those parts of the Summary Record of the 62nd Meeting of the ICSC which directly relate to the Committee's discussion of and action on the United States Government's instructions to Comsat concerning the proposed INTELSAT IV–A program—paragraphs 21–23, 28–35, and 38–44. As

109-028—73——4

indicated in your letter, Comsat briefed you and the other interested international carriers on this proposal some months ago and you have filed comments with the Commission in opposition to the program. It should also be noted that on January 11, 1973 the Commission received an application from Comsat for the necessary authorization to participate in a program for the construction of the satellites for the proposed INTELSAT IV–A program.

In view of the fact that the matters to be disclosed here involve primarily the instructions of the United States Government to Comsat and do not disclose confidential information of the other members, I do not believe ICSC would object to making its ordinarily confidential minutes available for your examination.[1]

It should be emphasized, however, that the record you request is a document prepared for internal use of the members of INTELSAT, an international group, and that permitting you to inspect portions of it should not be interpreted as making this document available for public inspection. In addition, all requests for this and any other private ICSC documents should be made and resolved on an *ad hoc* basis.

I also believe that, with the exception of two letters initiated by other government agencies, the second part of your request should be granted. One of the letters excepted is dated December 1, 1972 and constitutes a technical report by NASA to this agency concerning the proposal. Since their report includes proprietary and confidential information, NASA some time ago requested that it be given confidential treatment. The pertinent information therein, has however been included in a subsequent report dated December 12th and NASA has indicated no objection to disclosure of this summary. The other letter, dated December 11, 1972, from the Office of Telecommunications Policy to the Department of State involves two other agencies and, in accordance with the procedures specified in Section 0.461(c)(2) of the rules, we have referred it to OTP for response. Another letter dated December 14, 1972 from the Department of State to Comsat is being made available to you because the State Department has advised us that it has no objection to our making it available to you.

Accordingly, and subject to the requirements for review set out in Section 0.461(d)(2) of the rules, ITT World Communications Inc. is hereby authorized to inspect and copy paragraphs 21–23, 28–35, and 38–44 of the Summary Record of the ICSC adopted at the conclusion of its Sixty-Second Meeting. ITT World Communications Inc. is also authorized to inspect and copy all but two of the relevant letters between the United States Government agencies and between such agencies and Comsat which relate to the 62nd Meeting of the ICSC. Arrangements for inspection and copying should be made with the Office of the Executive Director.

Sincerely yours,

JOHN M. TORBET,
Executive Director.

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[1] The summary minutes of the First Session of the ICSC, held on October 1, 1964, provide that the Committee's official documents should not be made available for public release and that all discrimination of Committee records and documents should be made through the Secretarist of the Committee.

F.C.C. 73-138

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CHARLES W. JOBBINS, COSTA MESA-NEWPORT BEACH, CALIF.	Docket No. 15752 File No. BP-16157
GOODSON-TODMAN BROADCASTING, INC., PASADENA, CALIF.	Docket No. 15754 File No. BP-16159
ORANGE RADIO, INC., FULLERTON, CALIF.	Docket No. 15755 File No. BP-16160
PACIFIC FINE MUSIC, INC., WHITTIER, CALIF.	Docket No. 15756 File No. BP-16161
C. D. FUNK AND GEORGE A. BARON, A PARTNERSHIP D.B.A. TOPANGA MALIBU BROADCASTING CO., TOPANGA, CALIF.	Docket No. 15758 File No. BP-16164
ROBERT S. MORTON, ARTHUR HANISCH, MACDONALD CAREY, BEN F. SMITH, DONALD C. MCBAIN, ROBERT BRECKNER, LOUIS R. VINCENTI, ROBERT C. MARDIAN, JAMES B. BOYLE, ROBERT M. VAILLANCOURT AND EDWIN EARL, D.B.A. CROWN CITY BROADCASTING CO., PASADENA, CALIF.	Docket No. 15762 File No. BP-16168
VOICE IN PASADENA, INC., PASADENA, CALIF.	Docket No. 15764 File No. BP-16172
WESTERN BROADCASTING CORP., PASADENA, CALIF.	Docket No. 15765 File No. BP-16173
PASADENA BROADCASTING CO., PASADENA, CALIF.	Docket No. 15766 File No. BP-16174
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 15, 1973)

BY THE COMMISSION:

1. We have before us for consideration petitions for leave to amend their applications for construction permits filed May 24, 1971, and July 28, 1971, by Charles W. Jobbins and Western Broadcasting Corporation, respectively.[1]

2. Jobbins filed his petition for leave to amend in an attempt to bring his application for a construction permit into compliance with

[1] Also before us are: (1) a petition to reopen the record filed May 24, 1971, by Charles W. Jobbins; (2) comments on (1) filed June 2, 1971, by the Chief, Broadcast Bureau; (3) a reply to (2), filed June 14, 1971, by Jobbins; (4) a request to accept unauthorized reply *nunc pro tunc* filed June 21, 1971, by Jobbins; and (5) an opposition to Western's petition for leave to amend filed August 5, 1971 by Orange Radio, Inc.

the provisions of our *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). However, in light of the action we are taking in our associated Memorandum Opinion and Order, FCC 73–164 it would appear that this issue is mooted insofar as Jobbins is concerned. Therefore, Jobbins' petition for leave to amend will be dismissed as moot.

3. Western's proposed amendment reflects the divestiture by Richard A. Moore of his stock in Western (20%), and the transfer of that stock to a trust to be administered by Norman R. Tyre "for and on behalf of all of the existing shareholders of Western . . . (excluding . . . Richard A. Moore, who . . . is no longer a shareholder of the corporation) in accordance with their percentage ownership of the presently existing issued shares of the corporation." Upon consideration of Western's petition and Orange's opposition thereto, we have determined that a grant of Western's petition for leave to amend would not result in a comparative advantage to Western, nor would it work to the comparative disadvantage of any other applicant, and that good cause has been shown for the acceptance of the amendment. Also, on our own motion, we shall accept the petition for leave to amend filed by Western on May 10, 1971, and addressed to the Review Board, reflecting Moore's resignation as General Manager of Western, said petition being dismissed as moot by the Review Board without a ruling on the merits of said petition in light of the Board's disqualification of Western on technical grounds in its Decision, 29 FCC 2d 533 (1971).

4. Accordingly, IT IS ORDERED, That:

(a) the petition for leave to amend and petition to reopen the record filed May 24, 1971, and the request to accept unauthorized reply *nunc pro tunc* filed June 21, 1971, by Charles W. Jobbins ARE DISMISSED as moot;

(b) the petition for leave to amend filed July 28, 1971, by Western Broadcasting Corporation IS GRANTED; and

(c) the Review Board's Decision, 29 FCC 2d 533, released May 26, 1971, IS REVERSED, insofar as it dismisses the petition for leave to amend filed May 10, 1971, by Western Broadcasting Corporation, and said petition IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73-164

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
CHARLES W. JOBBINS, COSTA MESA-NEWPORT BEACH, CALIF.	Docket No. 15752 File No. BP-16157
GOODSON-TODMAN BROADCASTING, INC., PASADENA, CALIF.	Docket No. 15754 File No. BP-16159
ORANGE RADIO, INC., FULLERTON, CALIF.	Docket No. 15755 File No. BP-16160
PACIFIC FINE MUSIC, INC., WHITTIER, CALIF.	Docket No. 15756 File No. BP-16161
C. D. FUNK AND GEORGE A. BARON, A PARTNERSHIP D.B.A. TOPANGA MALIBU BROADCASTING CO., TOPANGA, CALIF.	Docket No. 15758 File No. BP-16164
ROBERT S. MORTON, ARTHUR HANISCH, MACDONALD CAREY, BEN F. SMITH, DONALD C. MCBAIN, ROBERT BRECKNER, LOUIS R. VINCENTI, ROBERT C. MARDIAN, JAMES B. BOYLE, ROBERT M. VAILLAINCOURT AND EDWIN EARL, D.B.A. CROWN CITY BROADCASTING CO., PASADENA, CALIF.	Docket No. 15762 File No. BP-16168
VOICE IN PASADENA, INC., PASADENA, CALIF.	Docket No. 15764 File No. BP-16172
WESTERN BROADCASTING CORP., PASADENA, CALIF.	Docket No. 15765 File No. BP-16173
PASADENA BROADCASTING CO., PASADENA, CALIF.	Docket No. 15766 File No. BP-16174
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted February 13, 1973; Released February 15, 1973)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND HOOKS DISSENTING; COMMISSIONER H. REX LEE CONCURRING AND ISSUING A STATEMENT.

1. The Commission has before it certain Applications for Review and related pleadings,[1] filed by the parties in the above-captioned pro-

[1] The pertinent pleadings before the Commission are as follows:
(1) Applications for Review of Review Board Decision, 29 FCC 2d 533, FCC 71R-161, released May 26, 1971, filed September 23, 1971, by (a) Charles W. Jobbins, (b) Goodson-Todman Broadcasting, Inc., (c) Topanga Malibu Broadcasting Co., (d) Pacific Fine Music, Inc., (e) Crown City Broadcasting Co., (f) Voice in Pasadena, Inc., (g) Western Broadcasting Corp., and (h) Pasadena Broadcasting Co.; (2) Opposition to item (1) filed October 28, 1971, by Orange Radio, Inc.; (3) Comments on item (1) filed October 28, 1971, by the Broadcast Bureau; (4) Reply to items (2) and (3) filed November 5, 1971, by Goodson-Todman Broadcasting, Inc.; and (5) Reply to item (3) filed November 12, 1971, by Orange Radio, Inc.
Since the filing of its Application for Review, California Regional Broadcasting petitioned the Commission for dismissal of its application from the proceeding, which petition was granted by Commission Order of October 3, 1972 (FCC 72-847). That application is therefore no longer being considered in this proceeding.

ceeding, said Applications requesting review of the Decision issued by the Review Board on May 26, 1971, 29 FCC 2d 533.

2. This proceeding involves several applicants seeking a license for a new operation to replace Station KRLA on the 1110 kHz frequency in the Southern California area. At present, there are nine remaining applicants competing for the use of this frequency. In his Initial Decision, the Hearing Examiner (as he was then titled) proposed granting the application of Voice In Pasadena, Inc. The Review Board, upon review, reversed the Examiner and disqualified all of the applicants with the exception of Orange Radio, Inc. of Fullerton, California. However, due to serious public interest questions that had been raised concerning Orange's character qualifications, the Review Board severed the application of Orange Radio from this consolidated proceeding and remanded it to the Examiner for a further hearing on five additional issues. The remand order was contained in a Memorandum Opinion and Order (29 FCC 2d 849)[2] released concurrently with the Decision, which Decision is the subject of the instant applications for review.

3. The Applications for Review filed by Jobbins and Topanga Malibu will be denied.

4. The Commission has also considered the Applications for Review filed by the remaining six applicants, the Comments on Applications for Review filed by the Broadcast Bureau and the pleadings filed herein by Orange Radio. We are of the opinion that a sufficient threshold showing has been made by the said applicants and the Broadcast Bureau to warrant review by the Commission of the findings and conclusions of the above-mentioned Review Board Decision.

5. Oral argument is being authorized herein so that the six parties whose Applications for Review have been granted, Orange, and the Broadcast Bureau may present their views on the numerous and complex questions presented herein. The Commission requests, however, that the parties include in their oral presentation a discussion of the following questions:

A. Whether the Review Board's "theory of the case" is valid for a disposition of this case, or whether findings and conclusions must be made on additional or all of the issues specified in the designation order.

B. Whether the Review Board committed prejudicial error in taking official notice, in the manner it did, of material regarding the technical operation of Oak Knoll Broadcasting and its predecessor, Eleven Ten Broadcasting, and whether the record is sufficient without the use of such material to make findings and conclusions on the dispositive issues.

6. Accordingly, and in the premises, IT IS ORDERED, That

(a) The above described Applications for Review of Charles W. Jobbins and Topanga Malibu Broadcasting Co. ARE DENIED; and

(b) The Applications for Review filed by Goodson-Todman Broadcasting, Inc., Pacific Fine Music, Inc., Crown City Broadcasting Co., Voice in Pasadena, Inc., Western Broadcasting Corporation and Pasadena Broadcasting Company ARE GRANTED.

7. IT IS FURTHER ORDERED, That Oral Argument shall be held before the Commission *en banc* commencing at 9:00 a.m. on the

[2] A limited aspect of the Board's action on this matter was upheld by the Commission in its Memorandum Opinion and Order released March 3, 1972, FCC 72-204, 33 FCC 2d 821.

19th day of March, 1973 and concluding on the 20th day of March, 1973 at the Commission's offices in Washington, D.C.; that each party shall be accorded a maximum of forty-five (45) minutes to present its arguments; that no party shall be permitted to reserve time for rebuttal; that the authorization to each of the aforementioned parties to present oral argument is subject to the filing of a written notice of intention to appear and participate within five (5) days after the release of this Order; and that oral argument shall be presented on the following dates and in the following order:

(a) March 19, 1973:
Goodson-Todman Broadcasting, Inc.
Pacific Fine Music, Inc.
Crown City Broadcasting Co.
Voice in Pasadena, Inc.
(b) March 20, 1973:
Western Broadcasting Corporation
Pasadena Broadcasting Company
Orange Radio, Inc.
Broadcast Bureau

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

(In Re Oral Argument in the *Charles W. Jobbins* AM Proceeding—Docket Nos. 15752, *Et Al.*)

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I concur in the Commission's decision to schedule oral argument in this very protracted comparative proceeding. It seems to me that the Review Board's "theory of the case"—that Section 307(b) allocation principles are controlling here and that the decision must be based on the most efficient and effective use of the 1110 KHz frequency by recognizing United States interests in retention of this existing high-power assignment and by assuring protection to the dominant clear channel station (KFAB, Omaha, Nebraska)—should be reviewed by the Commission since it represents a novel approach to the disposition of this case and since it effectively moots some of the hearing issues, including the *Suburban Community* issue. I would have preferred to accord the opportunity to participate in further proceedings to the low-power applicants (Charles W. Jobbins and Topanga Malibu Broadcasting Company) as well since they also have found fault with the Board's "theory of the case" and have argued that the Board committed reversible error in disqualifying them on efficiency grounds without consideration of the relative needs of the various communities for a transmission service. The basic questions raised by the Board's decision permeate all pending appeals, and it only seems fair to permit all applicants an opportunity to be heard by the full Commission, especially in a case that involves the application of basic allocation principles under Section 307(b) of the Act.

F.C.C. 73-146

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Applications of	
KING VIDEOCABLE CO., ELLENSBURG, WASH.	CAC-204 WA102
KING VIDEOCABLE CO., TOWN OF KITTITAS, WASH.	CAC-205 WA172
KING VIDEOCABLE CO., KITTITAS COUNTY, WASH.	CAC-206 WA175
For Certificates of Compliance Pursuant to Part 76, Subpart B, of the Commission's Rules	

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. King Videocable Company, operator of cable television systems at Ellensburg, the Town of Kittitas, and Kittitas County, Washington, all located within the Yakima, Washington smaller television market, has filed applications for certificates of compliance, pursuant to Section 76.13(c) of the Commission's Rules, seeking to add the "independent" signal of Canadian Station CHEK-TV (CBC), Victoria, British Columbia. King presently carries the following television broadcast signals:

KNDO, Channel 23, NBC, Yakima, Washington
KAPP, Channel 35, ABC, Yakima, Washington
KIMA-TV, Channel 29, CBS, Yakima, Washington
KYVE-TV, Channel 47, Educ., Yakima, Washington
KOMO-TV, Channel 4, ABC, Seattle, Washington
KING-TV, Channel 5, NBC, Seattle, Washington
KIRO-TV, Channel 7, CBS, Seattle, Washington
KCTS-TV, Channel 9, Educ., Seattle Washington
K79BY, Channel 79, Translator of KYQ-TV, Spokane, Washington

The proposed carriage of CHEK-TV is alleged to be consistent with Section 76.59(b) of the Rules, which provides that a cable system in a smaller television market may import sufficient television signals to meet a carriage compliment of three network stations and one independent station. Oppositions to these applications have been filed by the three Yakima network affiliates: Cascade Broadcasting Company,

licensee of Station KIMA–TV; Apple Valley Broadcasting, Inc., licensee of Television Broadcast Station KAPP; and Columbia Empire Broadcasting Corporation, licensee of Television Broadcast Station KNDO; and King has replied.

2. In the *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 141, we adopted Section 76.5(n) of the Rules, which defines an independent station as one ". . . that generally carries in prime time not more than ten (10) hours of programming per week offered by the three major national television networks." The Yakima stations assert that CHEK–TV presently broadcasts during prime time more than 10 hours of U.S. network programming, and therefore is not an independent station within the contemplation of the Rules. While not denying CHEK–TV's carriage of more than 10 hours of prime time U.S. network programming (the total amount is 20½ hours). King attributes much of it to the terms of CHEK–TV's affiliation contract with the Canadian Broadcasting Corporation, a Canadian television network, whereby it must carry all programming contracted for by CBC, regardless of its own inclinations. As a basic condition of its license under Canadian law, CHEK–TV must maintain an affiliation with CBC, and by virtue of this affiliation, it is presently required to carry 12½ hours of U.S. network programming contracted for by CBC. King argues that if these hours are eliminated, only 8 hours of prime time U.S. network programming are carried by CHEK–TV pursuant to arrangements that it controls. This argument assumes that a U.S. network program loses its identity as such because CBC has first contracted for it and then distributes the programming to its affiliates.

3. We are not persuaded by King's interpretation of Section 76.5 (n) of the Rules. That section focuses on the amount of U.S. network programming carried, not on the particular manner in which this carriage is effectuated. Section 76.5(n) does not distinguish between network programming contracted for by an individual station and programming that is carried pursuant to an affiliation contract, foreign or domestic. Nor does a U.S. network program lose its identity as such because it is distributed by a foreign network or network-affiliated station. Hence, CHEK–TV cannot be considered an independent station under Section 76.5(n), and King's carriage proposal, being inconsistent with the Rules, must be denied. The Yakima stations have raised other objections to carriage of CHEK–TV, but in view of our action herein, we need not pass on them.

In view of the foregoing, the Commission finds that a grant of the subject applications would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the above-captioned applications for certificates of compliance, filed by King Videocable Company, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-119

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MICKELSON MEDIA, INC., LAS VEGAS, N. MEX. For Certificate of Compliance	CAC-444 (NM008)

MEMORANDUM OPINION AND ORDER

(Adopted January 31, 1973; Released February 8, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT.

1. Mickelson Media, Inc. operates a 475-subscriber cable television system at Las Vegas, New Mexico, which is located outside of all major and smaller television markets. The system currently provides its subscribers with the following television broadcast signals:

KOB-TV (NBC Channel 4), Albuquerque, N.M.
KOAT-TV (ABC Channel 7), Albuquerque, N.M.
KGGM-TV (CBS Channel 13), Albuquerque, N.M.
KNME-TV (Educ. Channel 5), Albuquerque, N.M.

There are no additional television broadcast stations or television translator stations which, on request of the relevant licensee or permittee, would be required to be carried.

2. On May 24, 1972, Mickelson filed an application for certificate of compliance, requesting authorization to carry the following additional television signals:

KTLA (Ind. Channel 5), Los Angeles, Calif.
KTTV (Ind. Channel 11), Los Angeles, Calif.
XEPM-TV (Spanish Language, Channel 2), Juarez, Chihuahua, Mexico

Carriage of these signals is consistent with the provision of Section 76.57 of the Commission's Rules.

3. Spanish International Communications Corporation, licensee of Station KMEX-TV, Los Angeles, California, has objected to the proposed carriage of XEPM-TV. Spanish International argues that cable carriage of Mexican stations should be prohibited where domestic Spanish-language programming is available to the cable operator either off-the-air or via microwave. Since Mickelson proposes to carry two Los Angeles independent signals via common carrier microwave (see *American Television Relay, Inc.*, File Nos. 3650-3653 and 2786-2787-C1-P-67), it is alleged that the Los Angeles Spanish-language station (KMEX-TV) can and should be carried, as well, especially

since the microwave capacity is available while a separate route would be necessary to relay XEPM–TV.[1] Spanish International argues that the economic viability of domestic Spanish-language stations may be threatened by cable importation of Mexican signals since domestic stations rely on Mexican programming and must pay substantial duties and charges to obtain that programming which often is not made available until as much as a year or more from the date of its first Mexican transmission.

4. We have previously considered Spanish International's general arguments in connection with the cable television rulemaking proceedings in Docket 18397 et al. In our August 5, 1971, "Letter to Congress," 31 FCC 2d 115, we expressed our intent to permit unrestricted importation of foreign language television signals. Following that letter, Spanish International requested the Commission to reconsider. Nevertheless, in the *Cable Television Report and Order*, 36 FCC 2d 143, 180 n. 50, we adopted rules permitting the importation of foreign language signals, stating:

> We recognize the arguments in favor of supporting domestic stations. However, above all, we are attempting to encourage carriage of foreign language stations. Therefore, absent the unusual situation, we do not think any additional burden should be imposed on the cable systems involved.

Thereafter, Spanish International filed a petition for reconsideration of the *Cable Television Report and Order*. In denying that petition we said, at 36 FCC 2d 326, 335:

> We are attempting to encourage the carriage of foreign language programing. Where there is a local, Spanish-language station, it will of course get carriage priority. But outside its own market, where there is no "right" of carriage and no special need for protection against other stations programed in the same language, it is in the public interest to make foreign language programing available without impediment. In unusual situations where a domestic Spanish-language station makes a compelling demonstration for relief with respect to a particular application, we can afford such relief under § 76.7.

5. Turning to the specifics of Spanish International's present opposition, we note first that KMEX–TV is not local to the Las Vegas system, being some 750 miles distant, and, thus, has no "right" to carriage. Second, there is no showing that Spanish International or KMEX–TV will be harmed by the granting of this application; essentially Spanish International merely repeats arguments that we have already rejected. Since Spanish International has not met its substantial burden in attempting to prevent signal carriage consistent with our rules, its opposition will be denied.[2]

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

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[1] Mickelson's reply indicates that in reality the Los Angeles independent signals and the Juarez signal are available on the same microwave route, but that a completely new route would be necessary to relay KMEX–TV to Las Vegas.

[2] Spanish International has requested that all certificate applications involving the carriage of Mexican signals be consolidated so that the Commission can assess the full import of its policies. We have previously stated that since we are attempting to encourage the carriage of foreign language programming, special relief may be afforded only in those unusual situations where a domestic Spanish language station makes a compelling demonstration with respect to a *particular* application. Hence, the request for consolidation will be denied.

Accordingly, IT IS ORDERED, That the captioned application for certificate of compliance filed by Mickelson Media, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certificate of Compliance" and request for consolidation filed by Spanish International Communications Corporation ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-149

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re MORGAN COUNTY TELE-CABLE, INC., MARTINSVILLE, IND. For Certificate of Compliance	CAC-380 IN061

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT

1. On May 9, 1972, Morgan County Tele-Cable Inc., filed an "Application for Certificate of Compliance" (CAC-380) for a new cable television system to operate at Martinsville, Indiana, a community in the Indianapolis-Bloomington market (#16). The proposed system is to operate with 27 channel capacity to offer approximately 9,700 persons the following television signals: WISH-TV (CBS), WFBM-TV (NBC), WLWI (ABC), WURD (Ind.), WFYI (Educ.), all Indianapolis, Indiana; WTTV (Ind.), WTIV (Educ.), Bloomington, Indiana; WGN-TV (Ind.), Chicago, Illinois; and WXIX-TV (Ind.), Cincinnati, Ohio. On June 16, 1972, the licensee of WTVV filed an "Opposition by Sarkes Tarzian, Inc., to Application for Certificate of Compliance" and the licensee of WISH-TV filed an "Objection of Indiana Broadcasting Corporation pursuant to Section 76.17." And on January 23, 1973, Morgan County filed a "Reply to Oppositions."

2. Sarkes Tarzian objects to this application on the basis that it is inconsistent with the franchise requirements of Section 76.31 of the Commission's Rules in the following respects: (a) there is no showing that the franchise was issued after a full public proceeding consistent with Section 76.31(a)(1) of the Rules; (b) the franchise does not contain a construction time table consistent with Section 76.31(a)(2) of the Rules; (c) the franchise is of unlimited duration and thus inconsistent with Section 76.31(a)(3) of the Rules; (d) the franchise is inconsistent with Section 76.31(a)(4) of the Rules to the extent no provision is made for dealing with rate changes; and (e) the franchise is inconsistent with Section 76.31(a)(5) of the Rules to the extent that it makes no provision for investigation and resolution of service complaints. Morgan County responds to these objections as follows: (a) the franchise was granted after a public proceeding; (b) construction is to start immediately after Commission approval is granted and pole attachment agreements obtained; (c) the franchise is either

of indefinite duration or 25 years from August 2, 1965;[1] (d) the franchise fixes maximum rates, and rates in excess of these can not be charged without approval of the franchising authority; and (e) it will maintain an office in Martinsville to handle complaints. We find these representations sufficient to support the conclusion that Morgan County's proposal is in substantial compliance with our requirements sufficient to justify a grant until March 31, 1977, *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10; *LVO Cable of Shreveport-Bossier City*, FCC 72–954, 37 FCC 2d 1037. Indiana Broadcasting advances essentially the same objections to the franchise—plus an argument of noncompliance with Section 76.31(a)(6) of the Rules based on failure to provide for changes in this Commission's rules—and we reject them for the same reasons.[2]

3. Indiana Broadcasting raises two additional objections: (a) that Morgan County has not indicated that it will comply with the Commission's syndicated exclusivity rules, and (b) that Morgan County has not provided sufficient showing regarding its plans for its access channels to satisfy Section 76.13(b) of the Rules. We rule on these objections as follows: (a) cable systems are expected to comply with the syndicated exclusivity requirement; however, the certificating process does not contain any requirement that cable systems affirmatively agree to comply with this rule. In any event, we note and rely on Morgan County's representation that it intends to comply with the Commission's Rules. (b) In its application, Morgan County states its plans as follows:

5. *Non-Broadcast Activities*

Upon completion of construction, the system will offer a local origination channel and the customary automated services. The system will comply with the requirements of the Commission's Rules relating to non-broadcast activities, specifically:

a. the system will operate with a 27-channel capacity;
b. the system will provide bandwidth for non-broadcast uses equivalent to the bandwidth used for broadcast purposes;
c. the system will expand channel capacity as existing channel availability is exhausted, in compliance with the Commission's Rule 76.251(a)(8);
d. the system will dedicate one free, non-commercial public access channel available at all times on a first-come, first-served, non-discriminatory basis pursuant to the Commission's standards and to more detailed rules which will be adopted by the system;
e. the system will have available protection [sic] facilities for public use in connection with the public access channel;
f. the system will allocate one channel each for local government and local educational use, available without charge during the first five years;[3]
g. the system will offer all excess channel capacity for leased access services;
h. the system will have the capacity for two-way non-voice return communications;
i. the system will exercise no control over program content except to the extent necessary to insure compliance with the operating rules described in § 76.251(a)(11) of the Commission's Rules.

[1] Morgan County's franchise was granted July 7, 1965.
[2] Cable television operators are of course expected to comply with the Commission's rules whether or not such a provision is included in a franchise.
[3] We understand this to be a restatement of Section 76.251(a)(10) of the Rules and expect the applicant to adhere to the terms of that provision.

We believe these representations are adequate. Compare *Viking Media Corporation*, FCC 72–875, 37 FCC 2d 605, 606. Accordingly, Indiana Broadcasting's objection will be denied.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Opposition by Sarkes Tarzian, Inc., to Application for Certificate of Compliance" filed June 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the "Objection of Indiana Broadcasting Corporation Pursuant to Section 76.17" filed June 16, 1972, IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–380) for certificate of compliance filed May 9, 1972, by Morgan County Tele-Cable, Inc., IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-171

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Application of NORTHERN MOBILE TELEPHONE CO. For Consent To Assignment of Station KQB688, Ravenna, Ohio to Airsignal International, Inc.	File No. 7397-C2-AL-72

MEMORANDUM OPINION AND ORDER

(Adopted February 14, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has for consideration the above-captioned application for consent to assignment of license from Northern Mobile Telephone Company (Northern) to Airsignal International, Inc. (Airsignal) in the Domestic Public Land Mobile Radio Service (DPLMRS) at Ravenna, Ohio; a Petition to Deny filed by Cleveland Mobile Telephone Company, Inc. (Cleveland or Petitioner); an Opposition to the petition filed by Airsignal; and a reply filed by Cleveland.

2. Northern is the licensee of Station KQB688, a radio common carrier having transmitter locations at Hinckley and Freedom, Ohio. The proposed assignee is a wholly owned subsidiary of Western Union International, Inc. and is the licensee of 18 DPLMRS and Rural Radio stations in nine (9) states. Five other DPLMRS stations are licensed to subsidiaries of Airsignal itself.

STANDING

3. The assignment application was placed on Public Notice April 24, 1972. Cleveland filed its petition on May 24, 1972 as the licensee of radio common carrier stations KQB692 and KQA646 serving the Cleveland, Ohio area.

4. To establish standing, Petitioner states that Northern's two locations enable it to serve a substantial part of Cleveland's own service area, thereby placing the two in a competitive position for the same market. Cleveland further argues that an assignment of Station KQB688 to Airsignal would lead to even greater competition because of the assignee's potential economic strength allegedly obtained from Western Union International capital.

5. We find that Cleveland has presented sufficient facts to afford its standing in this case. Northern's FCC Form L for the period ending December 31, 1971 lists 40 subscribers and a $1,898 net loss from DPLMRS operations. While it is true that Cleveland's FCC Form L

for the same period shows that it is the dominant of the two carriers, the economic resources that Airsignal will undoubtedly bring to the market area will place it in a far better financial position than that of the present licensee, Northern. Since the proposed assignment would transfer the license from a financially marginal entity to a financially powerful enterprise already experienced in the operation of radio common carriers, it is reasonable to conclude that the proposed assignee would compete with the Petitioner substantially more effectively than had the proposed assignor, see *Broadcast Enterprises, Inc. v. FCC*, 129 U.S. App. D.C. 68, 390 F. 2d 483 (1968). Under such circumstances, we find that Cleveland has standing.

CROSS SUBSIDIZATION

6. Cleveland states that those Airsignal stations which operate at a loss are being subsidized either by Airsignal's profitable RCC enterprises, by WUI itself, or by both in concert. The result, according to Petitioner, is to place a burden on the public receiving service from the profitable stations or from the parent WUI. Specifically, it points out that Northern's FCC Form L showed a net loss, thus assuring that the new licensee would require subsidization. Moreover, Cleveland contends that only a hearing can determine the extent of cross-subsidization and how it effects the public.

7. We find no basis upon which to grant Petitioner's request for hearing. Cleveland has offered conclusionary allegations only. It has not made factual contentions on which to base a claim of discriminatory rates, nor has it demonstrated that the public would suffer from the planned financing of the proposed Airsignal facility. Its allegations are accordingly insufficient to warrant a hearing pursuant to Section 309(d)(2) of the Communications Act of 1934, as amended.

CERTIFICATION OF THE PUCO

8. On March 20, 1970, some two years before the filing of the instant assignment application, Northern filed an application with the Public Utilities Commission of Ohio for authorization to serve Garrettsville and Hinckley. On February 15, 1972 an examiner for that Commission recommended a grant to the extent that no infringement upon other RCC's in the area would occur. No mention of any proceeding before the PUCO was included in the assignment application.

9. Cleveland asserts that this information was a material fact, and as such should have been included within the assignment proposal since it was known to the parties prior to the filing of the application. Petitioner argues that if the State were to grant certification to Northern the assignment would then be subject to prior PUCO approval pursuant to both State law and Section 21.15(c)(4) of the Commission's Rules, for the certification would not be automatically transferred to the assignee.

10. The proceeding before the PUCO involving authorization to serve Garrettsville and Hinckley is of no concern to this Commission as it relates to the assignment application, since at the present time,

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it has no affect on the proposed assignment. In addition, the assignment application, itself, does not require the filing of such information. If the converse were true and the Garrettsville and Hinckley proposals were before this Commission, then Northern would have been obligated to inform the Commission of the pendency of that matter before the PUCO.

11. We find that there are no substantial and material questions of fact on the basis of the application, the pleadings filed, or other matters which we may officially notice, and that a grant of the Northern Mobile Telephone Company assignment application would serve the public interest, convenience, and necessity.

12. Accordingly, IT IS ORDERED, That the captioned application of Northern Mobile Telephone Company for consent to assignment of license of Station KQB688 at Ravenna, Ohio to Airsignal International, Inc. IS GRANTED; and the Petition to Deny filed by Cleveland Mobile Telephone, Inc., on May 24, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-148

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SARATOGA CABLE TV CO., INC., SARATOGA SPRINGS, N.Y. For Certificate of Compliance	CAC-722, CSR-229 NY397

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER H. REX LEE ABSENT.

1. On June 22, 1972, Saratoga Cable TV Company, Inc., filed an "Application for Certificate of Compliance" (CAC-722) in which it proposed to operate a new cable television system at Saratoga Springs, New York, a community in the Albany-Schenectady-Troy television market (the 34th largest). Objections to this application were filed by Albany Television, Inc., licensee of Television Broadcast Station WTEN, Albany, New York, and by Sonderling Broadcasting Corporation, licensee of Television Broadcast Station WAST, Albany, New York. In addition, Faith Center, licensee of Station WHCT-TV, Hartford, Connecticut, filed a letter with respect to this application. Thereafter, on August 28, 1972, Saratoga Cable filed a "Reply to Oppositions and Petition for Special Relief" to which Sonderling and Albany Television have responded.

2. The only contested issue regarding this application relates to signal carriage. Saratoga Cable first proposed to carry the following television signals on its system: WAST (ABC), and WTEN (CBS), both Albany, New York; WRGB (NBC), and WMHT (Educ.), both Schenectady, New York; WSBK-TV (Ind.), Boston, Massachusetts; and WOR-TV (Ind.), and WPIX (Ind.), both New York, New York. This proposal was challenged by the Albany television licensees as inconsistent with Section 76.61(b)(2) of the Commission's Rules [1] since

[1] Section 76.61(b)(2)(1) of the Rules provides that, "For the first and second additional signals, if any, a cable television system may carry the signals of any independent television station: *Provided, however,* That if signals of stations in the first 25 major television markets (see § 76.51(a)) are carried pursuant to this subparagraph, such signals shall be taken from one or both of the two such closest markets, where such signals are available. If a third additional signal may be carried, a system shall carry the signal of any independent UHF television stations located within 200 air miles of the reference point for the community of the system (see § 76.53), or, if there is no such station, either the signal of any independent VHF television station located within 200 air miles of the reference point for the community of the system, or the signal of any independent UHF television station.

NOTE: It is not contemplated that waiver of the provisions of this subparagraph will be granted.

the two closest markets in the first 25 major television markets are Boston and Hartford, where WHCT–TV is located. Consequently, Section 76.61(b)(2) of the Rules would prohibit importation of independent signals from New York City, the third closest market. Saratoga Cable argued that WHCT–TV's programs are heavily religious and that it should not, therefore, be treated as an independent station for purposes of Section 76.61(b)(2) of the Rules. During the pendency of this application, the Commission considered and rejected this argument, par. 21, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 334, and, thereafter, Saratoga Cable amended its application to propose carriage of WHCT–TV [2] and a waiver of the rules to allow it nonetheless to carry WOR–TV, WPIX and WSBK–TV—a total of four rather than three independent signals.

3. In support of its waiver request, Saratoga Cable argues: (a) that in par. 25, *Reconsideration of Cable Television Report and Order*, *id.*, the Commission indicated that it is "not unmindful of the need for special relief in unusual circumstances"; (b) that WHCT–TV triggers the present controversy but—because of its specialized programs with limited appeal—it is similar to a foreign language or educational station and similarly should not be counted towards a system's quota of distant signals; (c) that the Commission authorized carriage of New York independent signals near Saratoga Springs in *Champlain Cablevision, Inc.*, FCC 70–813, 24 FCC 2d 371, and there is no reason to refuse such carriage here since Saratoga Springs is closer to New York City than is Lake George; and (d) that grant of the relief requested would not have an adverse impact on Albany market stations. We rule on Saratoga Cable's arguments as follows: (a) this citation is irrelevant since it refers to possible waivers of the leapfrog rules while the issue here is whether to allow Saratoga Cable to carry four independent signals rather than three; (b) in general, we have rejected the argument that religious stations should not be treated as independents, par. 21, *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 334. Moreover—even if we were prepared to accept this argument in the abstract—Saratoga Cable has not attempted to show that WHCT–TV's programs are so specialized that such a rule would be applicable. Compare *Capitol District Better T.V., Inc.*, FCC 73 —, — FCC 2d —; (c) in *Champlain Cablevision* the Commission waived the leapfrog restrictions of its then-existing interim processing policies to allow a system outside the specified zones of all television stations to leapfrog various stations (including WHCT–TV) in order to deliver New York City independent signals to Lake George, New York. Since, however, a system beyond all markets is now exempt from leapfrog restrictions, we do not find the cited case relevant; and (d) in view of our rulings on (a)–(c) above, this also does not appear relevant. And even if it did, Saratoga Cable has not adequately supported the argument. In these circumstances, Saratoga Cable's waiver request will be denied.

4. Although not raised by the parties, it is conceded that Saratoga Cable's franchise (granted May 11, 1965) is not entirely consistent

[2] Faith Center has only sought carriage of WHCT–TV—it does not seek enforcement of Section 76.61(b)(2) of the Rules.

with Section 76.31 of the Rules (for example, it is not clear that the franchising authority has the control over subscriber rates contemplated by Section 76.31(a)(4) of the Rules). Consequently, although we find the franchise to be in substantial compliance with our policies, we will issue a certificate of compliance only until March 31, 1977. E.g., *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10. The remaining question for decision—in view of our ruling in par. 3 above—is the independent signals to be authorized to Saratoga Cable. Consistent with Section 76.61(b)(2) of the Rules, these will be: WHCT–TV (closest market of first 25 major markets); WSBK–TV (second closest market of first 25 major markets); and one independent UHF television station located within 200 air miles of the Saratoga Springs reference point, which Saratoga Cable may select. A certificate of compliance will be issued when Saratoga Cable advises the Commission of its choice.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the relief requested in Faith Center's letter of August 9, 1972, IS GRANTED.

IT IS FURTHER ORDERED, That the "Objection to Application for Certificate of Compliance" filed August 3, 1972, by Sonderling Broadcasting Corporation IS GRANTED to the extent indicated above, and otherwise IS DENIED.

IT IS FURTHER ORDERED, That the "Objection to Application" filed August 7, 1972, by Albany Television, Inc., IS GRANTED to the extent indicated above, and otherwise IS DENIED.

IT IS FURTHER ORDERED, That Saratoga Cable TV Company, Inc.'s application (CAC–722) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-028—73——6

F.C.C. 73-145

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SATELLITE SYSTEMS CORP., K. I. SAWYER AIR FORCE BASE, MICH. For Construction Permits in the Cable Television Relay Service	CPCAR-350 CPCAR-351

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Pending before the Commission are the captioned applications for construction permits in the Cable Television Relay Service (Part 78 of the Commission's Rules) filed by Satellite Systems Corporation, operator of a cable television system at the K. I. Sawyer Air Force Base on the upper Michigan peninsula. Satellite Systems indicates that it is now authorized to carry the signals of Television Stations WBAY-TV and WLUK-TV, Green Bay, Wisconsin and that it has in the past received these signals over the facilities of a microwave common carrier.[1] It now wishes to utilize its own facilities for reception of these signals and has accordingly filed the subject applications.

2. In response to these applications, American Microwave & Communications, Inc. (AMC) filed a petition to deny or designate for hearing. AMC indicates that it is now providing two channels of service carrying the signals of WLUK-TV and WFRV-TV to the CATV system serving Sawyer Air Force Base and that it has an application pending to provide an additional channel of microwave service to the Sawyer Air Force Base and several other communities in the vicinity. AMC predicates its opposition to a grant of the applications, not on any claim of economic injury, but on certain allegations concerning the licensee of Station WLUK-TV, Marquette, Michigan. According to AMC, WLUK-TV filed an opposition to its application to provide the signal of WBAY-TV to the cable television systems served by its station KWN-57, but did not file any opposition to Satellite Systems' applications in the cable television relay service to carry the same signal. AMC questions whether this situation did not develop because Satellite Systems proposes to make use of an existing antenna structure owned by WLUK, Inc. AMC states:

> Specifically, it is alleged that WLUK, Inc. may well have protested the original AMC microwave common carrier applications solely for the purpose of deriving

[1] Applicant indicates that it was carrying WBAY-TV before March, 1972, but that the availability of WBAY-TV has been restricted due to limitations on the common carrier microwave facilities over which it has been received.

economic advantage on the leasing of its own facilities to a competing radio service.

It is suggested that if in fact WLUK, Inc. did protest the application of AMC, and solely to interfere with the introduction of the service in question so that the customer would in fact seek and obtain alternative means of providing such service and would come to WLUK, Inc. to rent or lease the facilities in question, then such action is totally inconsistent with its responsibilities as a broadcast licensee of the Commission.

AMC also alleges that WLUK–TV objected to its application on the grounds that the signals in question were not grandfathered. AMC responded to these oppositions with affidavits showing that the signals were in fact carried and thus grandfathered. Because WLUK–TV did not raise the same question in response to the CAR station applications, AMC states "questions exist as to why WLUK–TV does not take a consistent position thereto, as with virtually identical applications by AMC." AMC states that it does not have within its knowledge the answer to the questions it raises but urges that they warrant inquiry by the Commission.

3. Both Satellite Systems and WLUK, Inc. responded to this petition to deny. WLUK, Inc. denies that there is any foundation for any of the allegations made and indicates that it neither uses, owns, nor has any economic interest in the antenna sites which Satellite Systems proposes to use, having sold its interest on April 1, 1972. An affidavit was also submitted by a Mr. Lou W. Chappell indicating that WBAY–TV was not carried on the system serving Sawyer Air Force Base between July of 1965 and December of 1969. In its response, Satellite Systems questions what standing AMC has in this proceeding, denies that there are any reasons for denying its application or setting it for hearing, and suggests that information concerning the wrongdoing of WLUK, Inc. should be directed to the attention of the Commission's Broadcast Bureau for appropriate action. Satellite indicates that the antenna sites in question were purchased by the principals of Satellite for use with the facilities applied for.

4. AMC filed a reply to these responses arguing that it is irrelevant if WLUK, Inc. obtained an economic advantage by selling its antenna site rather than leasing it. AMC's reply also included an affidavit by its President, Mr. James A. Klungness, stating that he had not spoken to Mr. Chappell for more than two years on any subject. This was intended as a refutation of the Chappell affidavit in which Mr. Chappell stated that Mr. Klungness had "orally confirmed to me" that WBAY–TV was not carried on the system between July 1965 and December 1969. In fact, according to the Klungness affidavit, the signal was carried on a switched basis during that period.

5. It appears that Satellite Systems is eligible to hold the authorizations applied for and that there are no technical impediments to a grant of the requested construction permits. Although there is some dispute as to the specific periods during which the signal of WBAY–TV has been carried,[2] there appears to be no dispute that the signal

[2] More specifically, the Chappell affidavit filed by WLUK, Inc. states "2. That from July 1, 1965 until December, 1969 the Iron Range CATV System did not carry the programming of WBAY–TV, Green Bay, Wisconsin. 3. That the K.I. Sawyer Air Force Base has been a part of the Iron Range CATV System and that the same programming that was fed into the Marquette CATV System was also fed into the K.I. Sawyer Air Force Base System." The Klungness affidavit filed by AMC states "There was not any interruption

was being carried on a daily switched basis on and before March 31, 1972 and that such carriage is authorized. Further, it appears that all of the questions raised in the petition to deny filed by American Microwave & Communications suggesting possible misconduct and need for Commission investigation pertain to actions of WLUK, Inc. In view of the fact that these allegations do not pertain to the applicant it would not be appropriate to deny or set for hearing the subject applications. The applications will accordingly be granted.

Accordingly, IT IS ORDERED, That the "Petition to Deny or Designate for Hearing" filed May 11, 1972 by American Microwave & Communications, Inc., IS DENIED.

IT IS FURTHER ORDERED, pursuant to Section 309 of the Communications Act of 1934, as amended, and Section 78.1, *et seq.* of the Commission's Rules, that the above-captioned applications ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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of the microwaving of WBAY signals to that area [Marquette County] during 1965 through 1969. WBAY was carried by all cable systems in that area on a switched basis." The applicant filed an affidavit by its treasurer, William G. Jackson, that states "the signals of WBAY–TV Ch. 2 Green Bay, Wisconsin were carried on the Cable TV System serving K.I. Sawyer Air Force Base, Michigan on a daily basis on and before March 31, 1972." The applicant also submitted an affidavit of Colonel Howard Jones, Commander of the Sawyer Air Force Base that states "signals of WBAY–TV Ch. 2 Green Bay, Wisconsin have been carried on the Cable TV system serving K.I. Sawyer Air Force Base daily, on a switched basis, on and before March 31, 1972."

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MRS. CARMEN C. RIHERD, KISSIMMEE, FLA.
Concerning Section 315, Political Broadcast Re Station WACY

FEBRUARY 14, 1973.

MRS. CARMEN C. RIHERD,
816 Canterbury Lane,
Kissimmee, Fla.

DEAR MRS. RIHERD: This letter will refer to your June 10, 1972 complaint against radio station WACY, Kissimmee, Florida. We regret that we are only now able to respond to your letter, but because the limited staff was for many months swamped with complaints and inquiries relating to the 1972 conventions and elections, which would have become moot unless resolved at once, and since our analysis indicated that your case involved a post-election matter, it was necessary to postpone consideration of your complaint. As you know, the licensee was asked for its comments regarding your complaint: its comments were filed on August 17, 1972, and your response to the comments was received August 23, 1972.

You state that you were a legally qualified candidate for the office of City Commissioner in Kissimmee, Florida; that your opponent, an incumbent City Commissioner, was invited to participate in a newscast featuring a panel discussion in which the participants discussed issues which you allege reflected on the election; that this broadcast was presented on March 25, 1972, three days before the election; and that the station did not invite you to participate. You indicate that you knew of the broadcast but did not request equal time due to the fact the broadcast was only three days before the election, and that this would not have afforded you sufficient time to prepare any material. In addition you allege that on March 18, 1972, Mr. Larry Gibson, an employee of station WACY, endorsed certain candidates over others, including your opponent for the office of City Commissioner, and made unfavorable comments about your candidacy; and that the station failed to notify you of the broadcast and offer you an opportunity to respond.

In reply, WACY states that the March 25, 1972 news program was broadcast to inform the public on the issues concerning the city; that no mention was made of policies or the upcoming election; and that your name was not mentioned in any context. WACY further states that twenty-five minutes of free time had been donated to all candidates for local office; that you had purchased additional spots; and that this demonstrates that you did have an ample opportunity to present your

views to the public. The station acknowledges that on March 18 Mr. Gibson endorsed certain candidates over others, but denies it was an editorial.

As you are aware, if a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting facility, he must, if request is timely made, afford "equal opportunities" to all other candidates for that office in the use of such broadcasting facility. However, if a legally qualified candidate appears on a bona fide newscast, bona fide news interview, bona fide documentary, or on-the-spot coverage of a bona fide news event, such appearance shall not be deemed a use of a broadcasting station in accordance with the provisions of Section 315 of the Communications Act of 1934, as amended.

It cannot be determined from the information before the Commission whether the March 25, 1972 program could be considered a bona fide newscast and therefore exempt under Section 315, or whether your opponents' appearance on this program would be classified a "use", thereby subjecting the station to the "equal opportunities" requirements of Section 315. However, we need not make that determination here. The licensee stated that the March 25 program was aired to discuss the city of Kissimmee's position with regard to an engineering contract. Assuming *arguendo* the program was not a bona fide newscast which would exempt it from the 315 requirement, the station would have had no obligation to notify you of your right to "equal time". (See Q. and A. 3, Part VI, of the enclosed Public Notice of August 7, 1970, "Use of Broadcast Facilities by Candidates for Public Office.") You stated that you had knowledge the program was to be broadcast. Under these circumstances, it appears that you would have had ample opportunity to request "equal time". Since you did not do so, it cannot be said that the licensee acted unreasonably or in bad faith.

If the March 25 broadcast were a bona fide newscast, the question then would be raised as to whether the issues therein were controversial issues of public importance and whether contrasting views were presented. However, before the Commission can effectively consider a fairness doctrine complaint it must receive specific information including: (1) the specific issue of a controversial nature of public importance broadcast; (2) the basis for the claim that the issue was a controversial issue of public importance, either nationally or in the station's local area at the time of the broadcast; (3) reasonable grounds for the claim that the station broadcast only one side of the issue in its overall programming, including an accurate summary of the views broadcast and presented by the station; and (4) whether the station has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on the issue. If the issues discussed on the program were subject to the fairness doctrine and if you furnish the above requested information, further consideration will be given to this aspect of your complaint.

With respect to the alleged personal attack broadcast by Mr. Gibson March 18, 1972, the Commission expects a complainant to submit specific information indicating: (1) the words or statements broadcast; (2) the basis for the claim that the words broadcast constitute an attack

upon the honesty, character, integrity or like personal qualities of an identified person or group; (3) the basis for the claim that a personal attack was broadcast during the presentation of views on a controversial issue of public importance; and (4) the basis for the claim that that which was discussed was a controversial issue of public importance, either nationally or in the station's local area, at the time of the broadcast (complainant should include an accurate summary of the view or views presented and broadcast by the station). Inasmuch as you have not furnished any evidence that the station specifically attacked your honesty, character, integrity or like personal qualities during the presentation of views of a controversial issue of public importance, no Commission action at this time is warranted.

As to whether the March 18 broadcast constituted an editorial endorsement of your opponent, the licensee has stated that Mr. Gibson's comments were personal selections intended as an introduction for this "talk" program and to encourage listeners to comment on the air, and were not authorized or intended as editorial endorsements. Section 73.123(c) of the Commission's Rules states that where a "*licensee*" uses an editorial to endorse or oppose a legally qualified candidate, it has an obligation to notify the other qualified candidate, or the candidate opposed in the editorial, of his opportunity to respond over that station's facilities. There is no evidence that the licensee, through its president or controlling stockholder, authorized these comments and it therefore cannot be said the station has failed to comply with Section 73.123(c). Comments such as those discussed above may come under the fairness doctrine, but that doctrine does not require that "equal time" be afforded to each side of a controversial issue of public importance. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. In this connection it is noted that the licensee did give free time to each of the local candidates, including you. It cannot therefore be said on the basis of the information before the Commission that the licensee has failed to act reasonably and in good faith in this regard.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-150

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re SENTINEL COMMUNICATIONS OF MUNCIE, INC., MUNCIE, IND. For Certificate of Compliance	CAC-1220 IN094

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. Sentinel Communications of Muncie, Inc. has filed an application for a certificate of compliance to begin cable television service at Muncie, Indiana, a community which is located outside of all television markets. The applicant proposes the carriage of the following television signals: WTTV (Ind.), Bloomington, Indiana; WRTV (NBC), WISH-TV (CBS), WLWI (ABC), WURD (Ind.), Indianapolis, Indiana; WIPB (Educ.), Muncie, Indiana; WGN-TV (Ind.), WFLD-TV (Ind.), WSNS-TV (Ind.), Chicago, Illinois. Clearview Cable of Richmond, A Joint Venture, a competitor for the Muncie cable television franchise, opposes this application on the grounds that the franchise was illegally awarded to Sentinel, and suggests that our signal carriage rules may be violated by a grant of this application.

2. There is no dispute that the franchise, awarded Sentinel on November 24, 1971, and subsequently amended January 26, 1972, is in substantial compliance with Section 76.31 of the Commission's Rules; however, Clearview argues that the applicable Indiana statute was not adhered to. According to Clearview's local counsel, the applicable Indiana statute, Section 48-7303 of *Burns Indiana Statutes*, requires that "in entering into a franchise agreement with any firm the city shall cause the full text of the franchise agreement to be published and a time fixed for a hearing thereon so that any taxpayer may appear and protest against any or all of the provisions of the franchise grant or contract." No legal proof of such publication was found by Clearview's counsel. Regarding the signal carriage proposal, Clearview concedes that Muncie is not located within the 35 mile specified zone of any commercial television broadcast station. Its argument, which is only tentatively advanced, is that the educational television station broadcasting in Muncie operates on a *commercial* channel—Channel 49—and not on a channel allocated for educational use. Therefore it is possible that Sentinel will not, in fact, be operating outside of all television markets, or so it is alleged.

3. Sentinel's reply includes copies of the franchise agreement which were published in the Muncie *Press* and *Star* in their editions of November 8, 1971. Also published was the date of the public hearing to be held by the Board of Works for the City of Muncie on this proposed agreement with Sentinel. A "Publisher's Claim" and "Publisher's Affidavit" accompanied these clippings, attesting to the fact of publication.

4. The assertion that Muncie may not lie beyond all television markets was characterized as "frivolous"; the television markets contemplated by the signal carriage rules were clearly those established for commercial television stations. That the Muncie educational station, WIPB, operates on a channel formally allocated for commercial use is irrelevant, the applicant contends.

5. We find Sentinel's response to be decisive. The submission of the pertinent newspaper clippings and affidavits answers the argument that the Muncie franchise was not published. And while the franchise was initially awarded for twenty years, we are satisfied that its other provisions are well within the criteria of acceptability established, *CATV of Rockford, Inc.*, FCC 72–1005, 38 FCC 2d 10. Similarly, the contention that there exists a Muncie, Indiana television market because an educational television is licensed to operate there is also without merit. Section 76.5 of the Rules defines the major and smaller television markets in terms of commercial television stations, and our signal carriage rules operate on the basis of that definition.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the application for Certificate of Compliance (CAC–1220) filed by Sentinel Communications of Muncie, Inc. IS GRANTED and an appropriate certificate of compliance will be issued.

IT IS FURTHER ORDERED, That the "Objection of Clearview Cable of Richmond, A Joint Venture" filed October 30, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION.
BEN F. WAPLE, *Secretary.*

F.C.C. 73–175

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
UNITED TELEVISION, INC. (KMSP–TV), MINNEAPOLIS, MINN.
Request for Deletion of Condition

ORDER

(Adopted February 15, 1973; Released February 16, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it a Petition to Stay its Order, FCC 72–1130, released December 21, 1972, which deleted the condition imposed by the Review Board in *WTCN Television, Inc.*, 14 FCC 2d 870, 14 RR 2d 4185, in response to a request from United Television, Inc. (United), licensee of station KMSP–TV, wherein the applications of stations WTCN–TV, WCCO–TV, KMSP–TV, KTCA–TV, and KTCI–TV were granted on condition that the proposed antenna structure be made available for use by present and future permittees and licensees of television facilities in the Minneapolis-St. Paul area who have already made requests or who make requests therefor upon a fair and equitable basis. The petition is filed by Midwest Radio-Television, Inc. (Midwest), licensee of station WCCO–TV, channel 4, Minneapolis. On January 26, 1973, United Television, Inc. (United), filed an opposition to the stay request.

2. Midwest and Viking Television, Inc. (Viking), permittee of station KTMA–TV, channel 23, Minneapolis, have pending petitions for reconsideration of the Commission's Order deleting the condition. In support of its stay request Midwest contends that in its petition for reconsideration it demonstrates that one of the bases upon which the Commission's Order was founded is erroneous and that, therefore, the Order is likely to be set aside. As a consequence, Midwest urges that the status quo be maintained so that no equities develop which may interfere with the disposition of the pending petitions for reconsideration.

3. In its opposition to the stay request United urges that the stay be denied because Midwest has not demonstrated likelihood that it will prevail on the merits; that irreparable injury will result if the stay is denied; and that there will be no harm to other interested parties if the stay is granted. In support, United contends that it and the FM station licensees with whom it is negotiating for tower rental will be injured while Midwest has not even alleged irreparable injury.

United also contends nothing new has been offered by Midwest to show that the situation with respect to channel 29 has changed. Concerning Viking, United alleges it has not been contacted and that Viking's plans are not definite.

4. We believe that grant of the stay is appropriate. The essential question before us is whether the factual basis of the Commission's Order deleting the condition is in error, and, if so, whether such rights as petitioners have may be prejudiced irreparably if a stay does not issue. We are of the view that so long as Viking is not certain that a separate site is available, at the very least a stay is warranted to prevent the creation of equities which could prejudice consideration of the petitions for reconsideration.

Accordingly, the Commission's Order, FCC 72–1130, deleting the condition imposed in *WTCN Television, Inc.*, 14 FCC 2d 870, released December 21, 1972, IS HEREBY STAYED pending final decision on the petitions for reconsideration of said Order, filed by Midwest Radio-Television, Inc., and Viking Television, Inc.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-152

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re WESTERN TV CABLE CORP., SALT LAKE CITY, UTAH For Certificate of Compliance	CAC-61 UT005

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 14, 1973)

BY THE COMMISSION: COMMISSIONER REID DISSENTING; COMMISSIONER H. REX LEE ABSENT.

1. Western TV Cable Corporation is the operator of a cable television system in Salt Lake City, Utah, a community in the 48th largest television market (Salt Lake City). It presently carries on this system the signals of the following television stations:

KCPX-TV, ABC, Salt Lake City, Utah
KSL-TV, CBS, Salt Lake City, Utah
KUTV, NBC, Salt Lake City, Utah
KUED, Educ., Salt Lake City, Utah
KBYU-TV, Educ., Provo, Utah
KOET, Educ., Ogden, Utah

Western TV now seeks to add carriage of the signals of:

KTVU, Ind., Oakland, California
KBHK-TV, Ind., San Francisco, California
KTXL, Ind., Sacramento, California

In order to obtain authorization to add carriage of these signals Western TV has filed an application for a Certificate of Compliance pursuant to Part 76, Subpart B of the Commission's rules. In response to this application Screen Gems Stations, Inc., licensee of Station KCPX-TV, Salt Lake City filed an "Objection to Certification."

2. Screen Gems objection is directed only to the fact that Western TV has proposed for carriage stations from the San Francisco-Oakland-San Jose market instead of awaiting activation of a station in Sacramento which presently holds a construction permit or carrying closer stations from Los Angeles. In connection with its certificate application, Western TV noted that under Section 76.61 of the Rules it is required, for the first two distant independent signals it carries, to select signals from the closest two of the 25 largest television markets if signals from any of the 25 largest markets are to be carried. The

third signal, it notes, may be any independent UHF television station if there is no independent station, UHF or VHF, within 200 miles as is the case with Salt Lake City. The Sacramento-Stockton-Modesto market is the closest top 25 market to Salt Lake City and carriage of KTXL is therefore consistent with the Rules. KBHK–TV is a UHF station and its carriage as the third signal is consistent with the Rules. However, Los Angeles is approximately 22 miles closer to Salt Lake City than is Oakland and a waiver of the rules was therefore requested in order to permit carriage of Station KTVU, Oakland, as the second signal. In support of the requested waiver, Western TV argues:

(a) The San Francisco-Oakland market is approximately 603 miles from Salt Lake City and Los Angeles is approximately 581 miles from Salt Lake City. The difference is less than 4 percent of the total mileage and is *de minimis* in extent.

(b) Microwave facilities of a miscellaneous common carrier have been authorized between San Francisco and Salt Lake City and no facilities are authorized from Los Angeles to Salt Lake City or to any place in Utah. Grant of the waiver will eliminate the necessity of constructing extensive new microwave facilities serving only a limited number of customers.

(c) Grant of the requested waiver would be consistent with the policy underlying adoption of leapfrogging rules as set forth in paragraph 92 of the *Cable Television Report and Order*. In that paragraph the Commission stated that without the leapfrogging restrictions "there is a risk that most cable systems would select their stations from Los Angeles, Chicago, New York, or one of the other larger markets. There would be no general participation by broadcast stations in the benefits of cable carriage." [1] This rationale, Western TV argues, warrants a waiver in this situation since San Francisco-Oakland-San Jose is a smaller market than Los Angeles and stations from the market have not received nearly the amount of cable carriage as have Los Angeles stations which are carried extensively throughout the Southwestern United States.

3. In opposition to the requested waiver Screen Gems calls attention to the note to Section 76.61(b)(2) of the rules which indicates that waivers of this rule are not contemplated. It also notes that although microwave facilities are not now authorized from Los Angeles to Salt Lake City, carriage of Los Angeles signals by Western TV would encourage the construction of such facilities and urges that Western TV could fully comply with the rules by carrying the signal of station KMUV–TV, Sacramento after it is activated.

4. Western TV's operation as proposed is entirely consistent with the rules, except for carriage of KTVU with respect to which a waiver has been requested.[2] In adopting the rules, particular concern was expressed that, in the absence of leapfrogging restrictions, a limited number of stations from the largest markets would be carried to the exclusion of all other stations. Thus whatever benefits could be obtained from cable carriage would be confined to these few stations.[3] Los Angeles stations, by virtue of their popularity and carriage on common carrier microwave facilities in the southwestern United States

[1] 36 FCC 2d 141, 179 (1972).

[2] Contrary to the Screen Gems suggestion there is no provision in the rules that would require Western TV to carry the signal of Station KMUV–TV, channel 15, Sacramento, California which has a construction permit but is not yet operational. The construction permit for this station was granted on July 31, 1968. Recent filings concerning the station as well as the Commission's *First Report and Order in Docket 18261*, 23 FCC 2d 325 (1970), reserving channel 15 for land mobile services, suggest that its activation is not imminent.

[3] *Cable Television Report and Order*, 36 FCC 2d 141, para. 92 (1972).

have had particular success in obtaining carriage. In contrast, San Francisco-Oakland stations, because of the market's location, have received more limited carriage. In addition, the market's location between the Seattle, Los Angeles, and Sacramenta-Stockton-Modesto markets means that it will be the first or second closest top 25 market in a smaller area than Los Angeles will be. Because the distance here involved is small, less than 4% of the total distance involved, and because this is an unusual situation in which waiver will further the policy of the rules to spread whatever benefits there may be from cable carriage among a greater number of stations, we will grant the waiver as requested.

In view of the foregoing, the Commission finds that grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Objection to Certification" filed May 12, 1972 by Screen Gems Stations, Inc. IS DENIED.

IT IS FURTHER ORDERED, That the above-captioned application (CAC–61) for Certificate of Compliance IS GRANTED and an appropriate Certificate of Compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–156

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
WGAL TELEVISION, INC. (W80AJ), WILLIAMSPORT, PA.
To Revove Condition on License of Television Translator Station

MEMORANDUM OPINION AND ORDER

(Adopted February 7, 1973; Released February 13, 1973)

BY THE COMMISSION: COMMISSIONER H. REX LEE ABSENT.

1. The Commission has before it for consideration a petition, filed November 8, 1972, by WGAL Television, Inc., licensee of television station WGAL–TV, channel 8, Lancaster, Pennsylvania (NBC), and television translator station W80AJ, Williamsport, Pennsylvania, requesting modification of the license of station W80AJ by removal of the program exclusivity condition to which the license is subject.[1] See *WGAL Television, Inc.*, 21 FCC 2d 345, 18 RR 2d 267; *WGAL Television, Inc.* (*W80AJ*), 22 FCC 2d 950, 18 RR 2d 1210; Initial Decision of Hearing Examiner in Docket No. 18850, 25 FCC 2d 1021, released August 20, 1970.

2. Briefly, the Commission, on January 28, 1970, granted without hearing the application (BPTT–1770) of WGAL Television, Inc., for a construction permit for a new 100-watt UHF television translator station to rebroadcast the programs of station WGAL–TV on output channel 80 in Williamsport. The application was, however, granted subject to a same-day nonduplication condition to protect the NBC network programming of station WBRE–TV, channel 28, Wilkes-Barre, Pennsylvania, since both stations are NBC affiliates. Williamsport is substantially beyond the predicted Grade B contour of station WGAL–TV and is within the Grade A contour of station WBRE–TV, predicted in accordance with the provisions of section 73.684(c) and (d) of the Commission's rules. Since the Commission granted WGAL's application subject to a condition not requested by the applicant, the applicant was entitled, under section 1.110 of the Commission's rules, to reject the grant as conditioned. On March 2, 1970, WGAL filed a petition for reconsideration, urging removal of the condition and stating that, if the Commission were unwilling to make an unconditional grant, the applicant desired a hearing. The Commission thereupon vacated the grant and designated the application for hearing. *WGAL Television, Inc.* (*W80AJ*), 22 FCC 2d 950, 18 RR 2d 1210. On July 23,

[1] The Commission also has before it for consideration WBRE–TV, Inc.'s opposition, filed December 6, 1972, and a reply thereto, filed December 26, 1972, by WGAL.

1970, WGAL filed, in the hearing proceeding in Docket No. 18850, a petition to terminate the hearing and for reinstatement of the conditional grant. This petition was granted August 18, 1970. The petition now before the Commission followed about a year and a half later.

3. Petitioner argues that removal of the condition is warranted by reason of a change of circumstances. The alleged change of circumstances consists of twenty letters of complaint from viewers who are allegedly unable to receive satisfactory signals either from WBRE–TV or from its translator in Williamsport.[2] On the basis of these letters, WGAL–TV urges that it is now apparent that the programming of WBRE–TV is not available to all of Williamsport and the underlying rationale of the Commission's decision to protect WBRE–TV's network programming is, therefore, faulty. WGAL–TV also argues, once again, that it is questionable whether Williamsport is within WBRE–TV's "actual" Grade B contour. This argument, however, has been thoroughly considered and rejected, and it is *res adjudicata*.[3] Of the twenty letters offered by WGAL–TV in support of its contention that WBRE–TV does not provide satisfactory service to Williamsport, seven were written by two viewers. In response to the contention that satisfactory signals are not available, WBRE–TV undertook field intensity measurements of WBRE–TV's signals in the general area of the residences of the viewers who wrote letters of complaint. WBRE–TV's conclusion, based on its measurement data, is that strong signals were available at the locations in question from either WBRE–TV directly or from the translator, or both. WGAL–TV furnished no engineering data to controvert these findings. On the record before us, we find that petitioner has provided no basis for removal of the condition and the petition will, therefore, be denied.

4. We think that one other observation is pertinent in this proceeding. WGAL is a Lancaster television station, not a Williamsport station, and it is not expected to provide service to Williamsport. See *West Michigan Telecasters, Inc.* v. *Federal Communications Commission*, ——— U.S. App. D.C. ———, 460 F 2d, 883, 23 RR 2d 2123. Reception in Williamsport of WGAL's non-duplicating programming is, no doubt, a welcome addition to the available television fare in that community, but WGAL has not established a need for its NBC network programs there.

For the reasons set forth, IT IS ORDERED, That the Petition to Remove Condition, filed herein by WGAL Television, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

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[2] Translator station W76AK is licensed to WBRE–TV, Inc., to serve Williamsport. It is authorized to operate with transmitter output power of 100 watts.

[3] See paragraph 4 of our Memorandum Opinion and Order in *WGAL Television, Inc.* (*WSOAJ*), 22 FCC 2d 950, *supra*.